

# WOMEN IN IRAN: OBSTACLES TO HUMAN RIGHTS AND POSSIBLE SOLUTIONS

ALISON E. GRAVES

"My sister, take your rights  
from those who keep you weak,  
from those who through a thousand ploys  
keep you seated in a house.  
Your angry complaining  
must become shouting, screaming.  
You must break this heavy chain  
to liberate your life.  
Rise, uproot oppression,  
revive the heart drenched in blood.  
Struggle, struggle to transform laws  
for the sake of your own freedom."<sup>1</sup>

## INTRODUCTION: THE STATUS OF WOMEN IN IRAN

A fifty-five-year-old woman is walking home, her arms full of groceries. It is hot, and the woman is clearly struggling to hold the groceries and maintain her veil, or *chador*, at the same time. Before she can put it back into place, the *chador* slips back and a single lock of hair appears on the woman's forehead. Immediately, she is arrested and imprisoned.<sup>2</sup> For her "crime" she receives eighty lashes with a

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1. Seid Abdol-Hamid Kalkali, *Tazkareye sho araye mo asere Iran (Memories of Modern Iranian Poets)*, in *WOMEN AND THE FAMILY IN THE MIDDLE EAST - NEW VOICES OF CHANGE*, 321 (Elizabeth Warnock Fernea ed., 1985).

2. See Priscilla F. Warren, *Women Are Human: Gender-Based Persecution Is a Human Rights Violation Against Women*, 5 *HASTINGS WOMEN'S L.J.* 281, 281 (1994); see also, Dutch Refugee Association, *Proceedings of the International Seminar on Refugee Women*, Soesterberg, the Netherlands, May 22-24, 1985, at 30 (1985) (describing Iranian woman who had been whipped for allowing too much hair to show from underneath her veil. Still a virgin, she was told if she was found "unsuitably dressed" again she would be raped, then shot. Iranian law prohibits execution of virgins.).

whip.<sup>3</sup> This disturbing story occurs with shocking frequency in modern-day Iran.<sup>4</sup> Since the establishment of the first restrictive laws for women fifteen years ago, each year thousands of Iranian women are jailed, punished and executed for not wearing full cover, and for speaking with men not of their family.<sup>5</sup>

The powerful Revolution of 1979, which ended the regime of *Reza Shah* Pahlavi and brought the religious leader *Ayatollah* Khomeini to power, was extremely promising for the number of women in Iran who forcefully supported it.<sup>6</sup> The Revolution, however, has denied many Iranian women rights they previously enjoyed.<sup>7</sup> Iranian women first obtained the right to vote in 1963, under the *Shah*,<sup>8</sup> and retain that right under the *Ayatollah* Khomeini today, although it is one of

3. See Walter C. Long, *Escape from Wonderland: Implementing Canada's Rational Procedures to Evaluate Women's Gender-Related Asylum Claims*, 4 UCLA WOMEN'S L.J. 179, 213 (1994) [hereinafter *Escape*]; see also Jack Anderson & Dale Van Atta, *Fearful Khomeini Turns on Own*, WASH. POST, Dec. 19, 1988, at B15.

4. See *Escape*, *supra* note 3, at 181 (describing how the Iranian government signed the United Nations Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), while simultaneously detaining hundreds of women in Iran for wearing lipstick or allowing their hair to be seen in public); see also M.H.A. Reisman, *Some Reflections on Human Rights and Clerical Claims to Political Power*, 19 YALE J. INT'L L. 509, 516 (1994) (stating that Iranian officials claim that all Iranian Muslims want socially inferior women).

5. Fact Sheet, *Status of Women in Iran*, COMMITTEE FOR HUMANITARIAN ASSISTANCE TO IRANIAN REFUGEES QUARTERLY REPORT (International Campaign in Defense of Iranian Women's Rights, New York, N.Y.), Jan. 1996 (detailing current laws for women in Iran regarding dress code and sex segregation).

6. See AZAR TABARI & NAHID YEGANEH, IN THE SHADOW OF ISLAM: THE WOMEN'S MOVEMENT IN IRAN 26 (1982) [hereinafter *SHADOW*]; see also Reisman, *supra* note 4, at 516. The fact that many women supported the Revolution does not mean that all Iranian women forcefully supported it. However, a great deal of Iranian women did support the Revolution, the numbers varying from the thousands to the millions. The exiled *Khomeini* promised that women would have equality with men, however, many women who supported the Revolution felt betrayed afterwards because this promise went unfulfilled. As Alexandra Zolan writes,

This official desire that women resume their traditional duties as wives and mothers may have come as a bit of a surprise to those women who fought to bring about the revolution. The writings of *Ayatollah* Khomeini, while in exile in Paris, indicated a change from his former traditional position regarding women's rights. The role of women that *Khomeini* described while in Paris indicated that Iranian women would be equal partners with men in the economic, social, and political arenas, and would enjoy complete freedom of choice.

Ferdows, *Shariati and Khomeini on Women*, in THE IRANIAN REVOLUTION AND THE ISLAMIC REVOLUTION IN IRAN 195 (1983) cited in, Alexandra J. Zolan, *The Effect of Islamization on the Legal and Social Status of Women in Iran*, 7 B.C. THIRD WORLD L.J. 183, 184 (1987).

7. Zolan, *supra* note 6, at 185. The *Ayatollah* completely wiped out the rights that women had obtained from the *Shah's* regime and replaced them with more restrictive laws for women.

8. See Haleh E. Bakhsh, *Veil of Fears*, NEW REPUBLIC, Oct. 28, 1985, at 15 (examining the current legal, educational, and social status of women in Iran); E. Rhodie, *Case Study: Iran*, in DISCRIMINATION AGAINST WOMEN 375 (1989) (stating that "[d]espite the fact that the national referendum proposing female suffrage was conducted in accordance with the old election laws which excluded women, the franchise was granted in 1963.").

the few rights allowed to women.<sup>9</sup> *Khomeini* deceived many women into thinking that the right to vote would be a powerful tool to use with other rights as a building block for their active participation in a new Iranian society.<sup>10</sup> Instead however, Iranian women received the right to vote without the power to use it, in a society that regards them as inferior.<sup>11</sup>

The goal of this paper is to detail the treatment of women in Iran today and to suggest possible ways to change this system of treatment, as well as the means for putting outside pressure through the United Nations and non-governmental organizations on the government of Iran to make it comply with basic international human rights standards for women. Part I will outline the relevant aspects of *Shari'a* law with respect to women. Part II will show the differences between Western views of suffragism and feminism to Iranian views, demonstrating how truly different these views are, and proposing the idea that Iranian women may not in fact want anything close to Western feminism.<sup>12</sup> Part III will compare women's rights before and after the revolution of 1963, and will make predictions for the future of some women in Iranian society. Part IV will detail the various human rights organizations for women, and how each can be used as a tool to promote reform in Iran from the outside.

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9. SHADOW, *supra* note 6, at 219.

10. See Zolan, *supra* note 6, at 188 (discussing the deception felt by many Iranian women after the 1979 Revolution when Khomeini ordered women to take a subjugated role to their husbands); see also Guity Nashat, *Women in the Ideology of the Islamic Republic*, in *WOMEN AND REVOLUTION IN IRAN* 199 (Guity Nashat ed., 1983) (stating that women kept the revolution essentially nonviolent in character); see generally NIKKI R. KEDDIE, *IRAN AND THE MUSLIM WORLD* 252-56 (1995) (detailing the various groups of women who supported the Revolution and the various reactions each had to the Revolution's after-effects).

11. See Sima Pakzad, *Appendix I: The Legal Status of Women in the Family in Iran*, in *THE EYE OF THE STORM: WOMEN IN POST-REVOLUTIONARY IRAN* 169 (Mahnaz Afkhami & Erika Friedl, ed. 1994) (stating, "In her first family role, woman as daughter appears already in an inferior position since she will not be able to retain and propagate her family name once she becomes married."); Haleh Afshar, *Women, Marriage and the State in Iran*, in *WOMEN, STATE, AND IDEOLOGY: STUDIES FROM AFRICA AND ASIA* 83 (1987) (reaffirming that Islamic principles, law and morality deprive women of any semblance of equality with men with the exception of the right to vote); see also Haleh Afshar, *The Legal, Social and Political Position of Women in Iran*, 13 INT'L J. SOC. L. 47, 58 (1985) (commenting on the effect of *Shari'a* law on Iranian women).

12. By "Western feminism" I am referring to the various types of feminism present in the western world. Whether one is a feminist attorney such as Catharine MacKinnon, a radical feminist author such as Andrea Dworkin, or one of the founders of the modern feminist movement such as Betty Freidan, there are elements of feminism that one shares which are entirely alien to Iranian women. Some of these elements are the rejection of national hierarchies, the quest for sexual equality, the organization of women in social and political groups, and the analysis of gendered political power.

## PART I: SHARI'A LAW - A BRIEF OVERVIEW

It is important to understand the relevant aspects of *Shari'a* law, especially with respect to women and Iranian society. *Shari'a* law begins, as does all Islamic law, with the *Quran*, a set of precepts, homilies and discourses given by Muhammad to his followers at various times.<sup>13</sup> The *Quran*, combined with *Hadith*, or tradition, is the fundamental basis for *Shari'a* law.<sup>14</sup> The *Quran* was, like many other holy books, a work in progress, and was finally produced in a formalized version by Zayd B. Thabit, Muhammad's secretary, around 630 AD.<sup>15</sup> The chapters laid out in the *Quran* are in no particular order, and at most are associated by various periods in Muhammad's life.<sup>16</sup> For example, the chapters, or *suras*, on women, family, marriage, divorce, and various other community-based laws appear in the *Medina* period, the best known period of Muhammad's life, but appear in no relation to the order in which Muhammad communicated them to

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13. The *Quran*, *sura XVI*, Verse 104. The revelations given to Muhammad came either through a divine state of ecstasy or through an intermediary which has been called the Holy Ghost or the Angel Gabriel. *Id.*

14. See I.P. PETRUSHEVSKY, *ISLAM IN IRAN* 86 (1985) (noting that early interpretation of the *Quran* involved "a painstaking study of its vocabulary and grammatical structure." As a result of this difficulty, two branches of Islamic study developed separating vocabulary from grammar. These distinct disciplines were termed philology and lexicology.); BARBARA FREYER STOWASSER, *WOMEN IN THE QURIAN, TRADITIONS, AND INTERPRETATION* 13 (1994) (stating, "The *Qur'an*, God's Word revealed to the Prophet Muhammad, teaches the believers the doctrine of its own nature.... The *Qur'an*, then, is both God's original and eternal Scripture and also His last, perfect and unchangeable revelation to humankind."). It must also be noted that the *Quran* has multiple spellings, some of which include *Quran*, *Qur'an*, and *Koran* as used throughout this paper.

15. PETRUSHEVSKY, *supra* note 14, at 88 (describing the critique stated by *Shi'ites* of Zayd's version of the *Quran*. According to Iranian *Shi'ites* in particular, Zayd removed all "verses that spoke of Ali and the Prophet's bias in his favour." *Shi'ites* believe that Ali was the true successor to Muhammad, and that decades of political manipulation robbed him of his right to succession.); RAMADAN, *ISLAMIC LAW* 90-91 (1970) cited in RODOLPHE J.A. DE SEIFE, *THE SHARI'A: AN INTRODUCTION TO ISLAM* 45 (1994) (discussing the various sects of Islam. "The Zaydis, who are concentrated in the Yemen, combine *Shi'i* and Sunni doctrines").

16. PETRUSHEVSKY, *supra* note 14, at 91 (stating that, "[t]he order in which the *Suras* and even separate fragments were arranged in the Uthman edition was, as we have said, arbitrary: it bears no relation whatever to the chronological sequence of the parts of the *Koran*."); DE SEIFE, *supra* note 15, at 26 (explaining the odd arrangement of the *Suras*. "It is interesting to note that, in fact, out of the 114 *Suras* most of the 'legislating' is in the first numbered *Suras*, which means the latest ones in chronological time, as a rule, are the most repetitive of earlier *Suras* as well as the longest. This is due to the peculiar organization of the *Suras*, accomplished some three hundred years after the death of the Prophet. The *Suras* are grouped according to length, not as to substance or chronological date.").

his followers.<sup>17</sup>

The *Quran* was a strong social statement that permanently changed the tribal mentality present in the Middle East, while incorporating aspects of it at the same time.<sup>18</sup> Just at the point when the *Quran* and Islam should have served to unify all of the tribes, Islam splintered due to Muhammad's death.<sup>19</sup> Muhammad never explicitly named a successor, and after his death his two closest female companions, his wife Aisha and daughter Fatima, made separate bids for the right to appoint a *caliph*, or successor.<sup>20</sup> Their familial war turned into a theological war with a sect of Islam breaking away from the majority *Sunnis* to declare Ali the successor *caliph* to Muhammad.<sup>21</sup> This sect was called the *Shi'a* sect, and their law, *Shari'a* law.<sup>22</sup>

The *Shi'a* sect did not receive as much attention as the more prevalent *Sunni* sect of Islam.<sup>23</sup> *Shi'ism* began as a political movement, with supporters following Muhammad's son-in-law Ali instead of the *caliphs* appointed by Aisha.<sup>24</sup> The *Shi'ites* believe that an *Imam*, or relig-

17. PETRUSHEVSKY, *supra* note 14, at 93 (commenting on Muhammad's switch in this period of his life from preaching about the end of this world and the next world to come to addressing the present needs of the Muslim community). Petrushevsky also discusses the need for *Shari'a* law to have evolved and adapted in its interpretations as tribes settled down in the area that would be known as Iran. *Shari'ah* laws evolved in response to various challenges and problems and must be viewed as such. They cannot be viewed in the abstract.

18. PETRUSHEVSKY, *supra* note 14, at 95 (detailing tribal practices such as blood feuds, female infanticide, and irregular sexual regulations which the *Quran* reprobates. "The *Koran* mirrored the new social attitudes of a dawning class society and pointed to a new way of life and a new religious outlook." *Id.*).

19. See GERALDINE BROOKS, NINE PARTS OF DESIRE: THE HIDDEN WORLD OF ISLAMIC WOMEN 88 (1995) (discussing the rift that occurred in Muhammad's family at his death, resulting in Muhammad's wife, Aisha, gaining power).

20. *Id.* at 89 (commenting on how Aisha supported three different *caliphs* against Muhammad's son-in-law Ali with success. The three successor *caliphs* were not personal favorites of Aisha, but her hatred of her nephew was strong enough to make her support them instead). It is not clear why Aisha hated Ali so much, but most theories suggest that Aisha was jealous of Muhammad's love for his daughter and son-in-law.

21. *Id.* (describing how Aisha finally raised forces against Ali and how Ali's forces killed hundreds of her partisans, including her close friends and relatives in a battle which she ultimately lost. Aisha's defeat in battle was to be a hard blow for Islamic women, because Ali perpetuated the *hadith* that, "[n]o people who place a woman over their affairs will prosper." The repression suffered under Ali was even more repressive than that suffered in Persian society.).

22. *Id.*

23. See E.G. BROWNE, WITHIN A LITERARY HISTORY OF PERSIA in PETRUSHEVSKY, *supra* note 14, at 202 (stating, "We still possess no comprehensive and authoritative statement of *Shi'a* doctrine in any European language"). See also DE SEIFE, *supra* note 15, at 43 (explaining that, "[s]ince the Shiites broke from the main body of the Muslim community, they themselves have divided into numerous sects, such as the Imamis [which is the major sect in Iran], Ismailis and Zaidis.").

24. See PETRUSHEVSKY, *supra* note 14, at 202 (stating that a religious leader named Abdullah B. Saba attempted to give *Shi'ism* a religious connotation under the rule of *caliph* Uthman, but it was only after civil war between the *Sunni* party and the *Shi'a* party that *Shi'ism* became a doc-

ious leader, cannot be chosen by the community as Aisha chose the *Sunni caliph*, but instead the *Imam* will rise to power by virtue of his inherited dignity and righteousness.<sup>25</sup>

The *Shi'ite Sunna*, or religious law, is different from the *Sunni Sunna*, consisting of its own *hadith* that rejects for the most part *hadith* from *caliphs* other than Muhammad and Ali.<sup>26</sup> One of the historical differences between the two branches can be found in the fact that *Shi'a* believers are allowed to deny their religion if circumstances necessitate - an action that will bring damnation for a *Sunni Muslim*.<sup>27</sup>

*Shari'a* law rises out of the *Shi'a Sunna*.<sup>28</sup> A key difference between the laws of the *Sunnis* and *Shi'ites* is the recognition by the *Shi'ite*

trine and qualified as a branch of Islam); DE SEIFE, *supra* note 15, at 42-44 (discussing the beliefs that led Shi'as to break away from the majority sect of Islam).

25. See PETRUSHEVSKY, *supra* note 14, at 202 (commenting that, "Imams are innocent of sin, infallible in their principles, deeds and faith."); INTRODUCTION TO ISLAMIC CIVILIZATION 59 (R.M. Savory, ed. 1976) in DE SEIFE, *supra* note 15, at 43-44.

The development of Twelve Shi'i political theory [the current political theory in Iran today], and in particular the Twelve Shi'i theory of the imamate, produced a concept of law which was fundamentally different from that of the Sunnis... For the Twelve Shi'i, the *imam* was the infallible interpreter of divine revelation, and the sole repository of all truth and knowledge... Because the *Shi'ite imam* was infallible, *Shi'i* jurists rejected human reasoning and personal judgment in any form as criteria for the formulation of legal rulings... But, just as *Sunni* legal practice differed from *Sunni* legal theory, so did *Shi'i* legal practice differ from *Shi'i* legal theory. In practice, the *Shi'i* jurists found themselves forced to give a place to human reason....

*Id.*

26. See PETRUSHEVSKY, *supra* note 14, at 220 (commenting that the *Shi'ite Sunna* rejects almost all *hadith* that criticize or oppose Ali); DE SEIFE, *supra* note 15, at 44 (writing, "... *Shi'ites* refuse to recognize any *Hadith* [traditions] that cannot be authenticated as having originated among Muhammad's immediate descendants.").

27. See PETRUSHEVSKY, *supra* note 14, at 227 (asserting that the persecution of the *Shi'a* branch occurred for such a long period of time that their ability to deny their faith became crucial to their survival. *Shi'ites* may denounce their faith publicly as long as they denounce the statement inwardly and do penance after they are safe from threat.).

28. See PETRUSHEVSKY, *supra* note 14, at 230 (describing the rise of *Shari'a* law under various *Shi'ite* leaders after Ali. The process was clearly political in nature. The political nature of the process supports the theory that *Shi'ism* is still more concerned with the laws of the community than religious obligations.); DE SEIFE, *supra* note 15, at 28 (discussing the need for more than the Quran in the early years of Islam).

Since the Quran, by itself, could not provide an adequate source for any complete system of law, the early Muslim Community was faced with the problem of how to obtain legal rulings which would be accepted by the whole community on points about which the Quran was either silent or unclear, or where it was subject to more than one interpretation.

*Id.*

*Shari'a* of temporary marriage.<sup>29</sup> The various ramifications of allowing temporary marriages will be discussed in part IV of this note. The *Shi'ites* also differ from the *Sunnis* in that they only allow marriage to another Muslim,<sup>30</sup> condemn to death anyone guilty of blasphemy, reviling the prophet Muhammad, or renouncing Islam, and they refuse to eat with non-Muslims or to eat food prepared by a non-Muslim.<sup>31</sup> *Shi'ites* will only declare a Holy War if their *Imam* assents to it, and have many additional religious rituals and days beyond what the *Sunnis* observe.<sup>32</sup>

It is impossible to adequately describe *Shi'ism* or *Shari'a* law in a few pages. However, this background will at least allow the reader to put what follows into its relative context. *Shari'a* law is an interpretation of Islam, and one of the precepts laid out by Islam is that the concrete realities of the period should be taken into account when interpreting the *Shari'a* code of law, and that *Shari'a* law will evolve when confronted with changes in society.<sup>33</sup> The *Quran* is the word of God, for Muslims, subject to no higher authority, but subject in part

29. See PETRUSHEVSKY, *supra* note 14, at 230 (commenting that *Sunni* Muslims believe the prophet Muhammad abolished temporary marriages because they were heathen practices. *Shi'ites* deny this and refuse to accept the formal prohibition set down by *caliph* Uthman, because they refuse to recognize the validity of Uthman as a *caliph*.); ASGHAR ALI ENGINEER, *THE RIGHTS OF WOMEN IN ISLAM* 114 (1992) (describing the uniqueness of temporary marriage to the Iranian sect of *Shi'ism*. "*Mut'a* marriage is a temporary contract of marriage and is valid only among the *Ithna 'ashari* *Shi'as* also known as the *Imamiyyas*... . The *Imamiyyas* maintain that the validity of *mut'a* marriage is mentioned in the *Quran* in chapter four (verse 24).").

30. PETRUSHEVSKY, *supra* note 14, at 232 (noting that *Sunnis* allow men to marry women "of the Book", which are Muslims, Jews and Christians - those that have similar Holy Books to the *Quran*.); DE SEIFE, *supra* note 15, at 57-58 (stating, "The only other ground on which marriage is prohibited in the *Qur'an* is *Shirk* (associating with unbelievers). [*Shi'a*] Muslim men and women should not marry idolaters (a non-believer in the Muslim faith) unless the idolater converts and is made to believe in one God.").

31. PETRUSHEVSKY, *supra* note 14, at 232 (asserting that one who is put to death for denouncing Islam must have been born into Islam. Those who were born into other religions and embraced Islam, only to later renounce their faith, are given 30 days to consider their decision and do penance. If after 30 days they still wish to renounce Islam, they, too, will be put to death.); DE SEIFE, *supra* note 15, at 64, 70-71.

32. PETRUSHEVSKY, *supra* note 14, at 233 (describing the various additional religious days that *Shi'ites* observe. These are the day of mourning for the massacre of *Imam* Husayn and his *Shi'ite* followers (the "day" actually lasts ten days), the day of the death of *Fatima* (Muhammad's daughter and *Imam* Ali's mother), *Imam* Ali's birthday, and the day when *Imam* Ali received his mortal wound.).

33. See KEDDIE, *supra* note 10, at 154 (stating, "[s]ince *Shi'ism* comprises a whole series of religious schools going back to shortly after the death of the Prophet Muhammad in 632 AD, it is not surprising that a wide variety of politico-religious doctrines have been promulgated and followed under the *Shi'i* name.").

to the interpretation of religious scholars.<sup>34</sup> As a result, the politics of Iran become crucial to any discussion of the effect of *Shari'a* law on Iranian women.<sup>35</sup> This note will detail further that crucial link and discuss its ramifications.

## PART II: THE POSITIONING OF FEMINISM FOR IRANIAN WOMEN

Iranian women and western women have different views on feminism.<sup>36</sup> Iranian society teaches that "feminists" are western, with all the western corruption that Islam rejects.<sup>37</sup> According to Islamic fundamentalists, "western feminists" wear revealing clothing, are not religiously devout, and hate men.<sup>38</sup> Islamic leaders teach that western feminists do not support the family, which Iranians consider central to every aspect of life.<sup>39</sup> Iranian views on feminism generally echo that of former Israeli Prime Minister Golda Meir, who referred to feminists as "those crazy women who burn their bras and go around all disheveled and hate men [and think] it's a misfortune to get pregnant and a disaster to bring children into the world."<sup>40</sup>

A majority of active Iranian women also have a need to tie their claims for rights to the national identity of Iran.<sup>41</sup> To the majority of Iranian women, the concept of rebelling against their government in

34. Being a Muslim is dependent essentially only on one belief: belief in *Allah*, universal creator and sustainer who sends revelation for the guidance of humanity. Believing in *Allah* and *Allah's* revelation to and through the prophet Muhammad, preserved in the *Quran* is, however, not identical with accepting the *Shari'a* as binding on oneself ... the assertion that the *Shari'a* is divine, transcendent and eternal, can be seriously questioned. Farida Shaheed, *Controlled or Autonomous: Identity and the Experience of the Network, Women Living Under Muslim Laws*, 19 J. WOMEN IN CULTURE & SOC'Y 997, 1002 (1994).

35. *Id.* (noting that, "[r]ecent years have shown that suitable interpretation of scriptures and Muslim traditions can make nearly anything one likes seem Islamic and *Shi'a* ...").

36. SHADOW, *supra* note 6, at 13-14 (comparing western feminism and Iranian women's movements).

37. SHADOW, *supra* note 6, at 36.

38. SHADOW, *supra* note 6, at 174. The author wishes to stress that the use of "western feminists" in this context is the stereotype promoted by fundamentalist Islamic governments.

39. SHADOW, *supra* note 6, at 98-103. The *Ayatollah* Khomeini stated that the family was the central unit in Iranian society, the foundation of politics, economics and culture. According to Khomeini, strengthening the family strengthens Iran as a nation.

40. SIMONA SHARONI, *GENDER AND THE ISRAELI-PALESTINIAN CONFLICT - THE POLITICS OF WOMEN'S RESISTANCE*, 99 (1995).

41. See SHADOW, *supra* note 6, at 35-38 (remarking on Iranian women's movement and ideology). But see WOMEN IN THE MIDDLE EAST-PERCEPTIONS, REALITIES AND STRUGGLES FOR LIBERATION 160 (Haleh Afshar, ed. 1993) [hereinafter MIDDLE EAST] (analyzing women's movement in Iran and its relationship to various political movements in Iran). The opinions of western feminism described here are largely those imputed from the opinions of the Iranian government. As it is difficult to find documentation of the actual opinion of many Iranian women, these opinions of feminism may not actually reflect the viewpoints of Iranian women, but they definitely reflect the views of the Iranian *Imams* toward western feminism.



order to obtain more rights is foreign.<sup>42</sup> Almost every Iranian women's group has ties to a political party.<sup>43</sup> In fact, Iranian women often prefer achieving a party's goals before fighting for their own rights,<sup>44</sup> as they believe that once party policies are implemented, achieving rights for women will be an easy matter.<sup>45</sup> Most women, however, support the party of their husband, and thus lose their powers of individual persuasion.<sup>46</sup>

The positioning of feminism in Iran is very different from the positioning of feminism in the West.<sup>47</sup> Iranian women do not have the right of assembly.<sup>48</sup> Married women do not have the right to an education above primary school.<sup>49</sup> Educated women in Iran are seen as anti-Islamic and are highly criticized.<sup>50</sup> As a result of their Constitutional guarantees, American women can express themselves more freely than their Iranian counterparts.<sup>51</sup> Women in the United States can hold a rally, make a public speech, write a critique of government practices, or protest against discrimination.<sup>52</sup> These activities are expressly forbidden to Iranian women.<sup>53</sup> Any non-submissive act on the part of an Iranian woman may be considered a violation of

42. WIEBKE WALTHER, *WOMAN IN ISLAM*, 187 (1981) (comparing western ideas of feminism to middle eastern ideas of feminism); Lynn P. Freedman, *Women and the Law in Asia and the Near East*, GENESYS, SPECIAL STUDIES NO. 1, 19-21 (1991) (discussing the legal status of women in the Near East).

43. SHADOW, *supra* note 6, 203. The National Union of Women (NUW) has strong Marxist ties in Iran, and the Women's Society of the Islamic Revolution allies itself with an Islamic ideological trend.

44. SHADOW, *supra* note 6, 203.

45. SHADOW, *supra* note 6, 203.

46. See Mujahidin-eKhalq, *Women on the Path of Liberation*, in SHADOW, *supra* note 6, at 112 (stating that women's political roles in Iran are few, and that "political decisions are almost completely in the hands of men"). This self-defeating practice will be discussed in more detail in Parts III and IV.

47. Nahid Yeganeh, *Women's Struggles In the Islamic Republic of Iran*, in SHADOW, *supra* note 6, at 27-28.

48. See ELIZ SANASARIAN, *THE WOMEN'S RIGHTS MOVEMENT IN IRAN: MUTINY, APPEASEMENT, AND REPRESSION FROM 1900 TO KHOMEINI* 133-47 (1982) [hereinafter *WOMEN'S MOVEMENT*] (summarizing Khomeini's repressive tactics in Iran).

49. The average age of marriage in Iran is 12 to 13. See Jacqueline Rudolph Toubia, *Effects of the Islamic Revolution on Women and the Family in Iran*, in *WOMEN AND THE FAMILY IN IRAN* 131, 142 (1985); Fact Sheet, *supra* note 5.

50. See Steven E. Coleman, *Survey of Recent Developments in Third Circuit Law: Immigration Law*, 24 SETON HALL L. REV. 1722, 1726 (1994) (stating that educated women are often persecuted in Iran because Iranian law does not grant women the right of assembly, and family units tend to enforce restriction on assembly by forbidding women to associate with unrelated men).

51. *Id.*

52. ROGER FULFORD, *VOTES FOR WOMEN - THE STORY OF A STRUGGLE*, 235-41 (1957).

53. Coleman, *supra* note 50, at 1726.

the law.<sup>54</sup>

Iran does not have a law against feminism. However, regulation of most of the actions in a woman's life effectively stops a feminist discourse.<sup>55</sup> The *Quran* itself allows the beating of women who do not obey the men of their family.<sup>56</sup> Speaking out on the negative position of women in Iran is likely to be viewed as disobedient, and therefore, deserving of punishment.<sup>57</sup>

In spite of eminent threats of bodily harm and death, many Iranian women persist in their quest for more liberal laws.<sup>58</sup> Most Iranian activists, however, have different goals from western feminists.<sup>59</sup> The goal for many western suffragists was to secure the right to achieve sexual equality.<sup>60</sup> For most Iranian women these goals have the lowest priority.<sup>61</sup> Other rights in the current Iranian social structure are much more important to these Iranian women.<sup>62</sup>

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54. WOMEN'S MOVEMENT, *supra* note 48, at 14. At various times in recent Iranian history, the law has gone so far as to forbid women from walking on the same side of the street as men after four p.m., often requiring police permission in writing before being able to cross the street to enter one's own house.

55. Azar Tabari, *Islam and the Struggle for Emancipation of Iranian Women*, in SHADOW, *supra* note 6, at 14-15 (describing how *Shari'a* law forbids right of assembly, free speech or privacy for women. With these rights suppressed, Iranian feminists face severe punishment every time they speak out about their plight.).

56. The Quran, *Sura Women*, Verse 34 (Macmillan 1955). "So good women are the obedient, guarding in secret that which Allah hath guarded. As for those from whom ye fear rebellion, admonish them and banish them to beds apart, and scourge them. Then if they obey you, seek not a way against them."

57. Coleman, *supra* note 50, at 1726.

58. *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993) (ruling that Fatin was not persecuted enough to receive asylum in the United States, even though she faced imprisonment, lashing, and possible execution for refusing to wear full *hejab* with *chador* in public when she returned to Iran).

59. See Fedayeen-eKhalq, *A Brief Review of Two Years of Democratic Struggles of Women*, KAR, Mar. 8, 1981, in SHADOW, *supra* note 6, at 129-32 (setting forth the gender division of tasks for Iranian women). Again, one runs into difficulty over the definitions of feminism. For Iranian women, the term may be meaningless, or, as Nikki Keddie writes, "[the word] Women [means] only feminist women, just as for others 'workers' may only be militants." KEDDIE, *supra* note 10, at 254.

60. EULFORD, *supra* note 52, at 235-41 (explaining that for British women, obtaining the right to vote was a crucial step toward gaining social freedoms such as sexual equality - the ultimate goal of the British feminist movement).

61. Fedayeen-eKhalq, *Women's Rights and Islamic Hejab*, KAR, July 9, 1980, in SHADOW, *supra* note 6, at 136-37 (discussing an editorial on the forced wearing of *hejab* which stated that Iranian women's highest priorities should be autonomy in dress and legal rights concerning divorce).

62. SHADOW, *supra* note 6, at 136-37.

One of these other rights is the right to *mahr*, the bridal price.<sup>63</sup> Roughly translating to a dowry, the *mahr* is a sum of money payable by law to the bride under certain circumstances.<sup>64</sup> A marriage cannot be made official without it, and the amount is held by the husband upon the consummation of the marriage.<sup>65</sup> In fact, many Iranian jurists feel the *mahr* is the price to be paid for the exclusive rights to the woman's sexuality and reproduction capabilities.<sup>66</sup> Although it is mainly used as the wife's only bargaining chip in her relationship with her husband, the bride is free to dispose of her *mahr* as she wishes after the end of a marriage.<sup>67</sup> In Iran, the wife may not touch the *mahr* while she is still married.<sup>68</sup> Often, however, she will demand full payment of the *mahr* if the husband threatens a divorce.<sup>69</sup> Because the *mahr* is generally a greater sum of money than the husband can easily raise, it allows the wife to maintain some sense of security in the marriage.<sup>70</sup> In rural towns, the *mahr* is often replaced by *shirbaha*, which means the price of milk.<sup>71</sup> *Shirbaha* is paid to the father instead of the bride, and in effect buys the bride from the father and gives nothing to the bride.<sup>72</sup> This strips rural Iranian women of almost all legal power because they lose the small bargaining position

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63. Tamilla F. Ghodsi, *Tying a Slipknot: Temporary Marriages in Iran*, 15 MICH. J. INT'L L. 645, 664 (1994) (using *mahr* as example of how Iranian women are considered second class citizens socially and legally. The *mahr* is a way to purchase the bride and all legal rights concerning her welfare. On the other hand, it seems to be the only right an Iranian woman has to defend herself if her husband wishes to discard her and his legal obligations to her.).

64. Rhodie, *supra* note 8, at 375; ENGINEER, *supra* note 29, at 111 (stating that "[m]ahr or dower is an essential part of Islamic marriage ... [h]owever, the Quran does not use the word *mahr*, but either *saduqatun* or *ujurun*. *Saduqatun* is derived from *sadaqa* which means truthfulness, sincerity and gift given as an act of virtue. It is not something to show off one's social or financial status.").

65. ENCYCLOPEDIA M, VOL. III (Luzac, 1932) 137 (citing MIDDLE EAST, *supra* note 41, at 68).

66. Ghodsi, *supra* note 63, at 660-61.

67. Ziba Mir-Hosseini, *Women, Marriage and the Law in Post-Revolutionary Iran*, in MIDDLE EAST, *supra* note 41, at 68-80 (asserting the value of *mahr* because it is the bride's only legal right against her husband. The husband cannot spend the *mahr*, but has to keep it by law to ensure the security of his wife.).

68. MIDDLE EAST, *supra* note 41, at 68-80.

69. MIDDLE EAST, *supra* note 41, at 68-80.

70. MIDDLE EAST, *supra* note 41, at 68-80.

71. MIDDLE EAST, *supra* note 41, at 68-80.

72. MIDDLE EAST, *supra* note 41, at 68-80.

In its family and marriage regulations the *Shari'a* retained certain items of the patriarchal clan system of old Arabia. One of these was the obligation of the bridegroom to pay the bride a marriage settlement called *mahr* ... The actual sum varies greatly, depending on the financial status of the bridegroom's family; but more is, as a rule, expected for a virgin...

PETRUSHEVSKY, *supra* note 14, at 143.

a full *mahr* would give them.<sup>73</sup>

*Mahr* is a vital right for Iranian women in preventing unwanted divorces or new marriages<sup>74</sup> because it enables women to threaten their husbands with full payment of the *mahr* if they take another wife or request a divorce.<sup>75</sup> Also, if a woman desperately wants to leave a marriage, she can release her husband from the obligation of paying the *mahr* as a condition of accepting the divorce.<sup>76</sup>

A second right crucial to women's survival in Iranian society is the legal reality of divorce.<sup>77</sup> Since 1979, religious law, or *Shari'a* law, governed marriage law in Iran by judges trained in *fiqh*, or Islamic jurisprudence.<sup>78</sup> These religious courts have stripped women of every right in divorce proceedings.<sup>79</sup> For many modern Iranian women, regaining the old standards of family law is much more important right now than other goals such as achieving sexual equality.<sup>80</sup> For most Islamic women, sexual equality is irrelevant.<sup>81</sup> The text of the *Quran* places women in a secondary sexual position to men. Therefore, for many Iranian women sexual equality is not an issue.<sup>82</sup> The *Quran*, however, does not state that women can divorce at will for no valid

73. MIDDLE EAST, *supra* note 41, at 68-80.

74. MIDDLE EAST, *supra* note 41, at 68-80.

75. MIDDLE EAST, *supra* note 41, at 68-80.

76. MIDDLE EAST, *supra* note 41, at 68-80.

77. WOMEN'S MOVEMENT, *supra* note 48, at 95-97.

78. WOMEN'S MOVEMENT, *supra* note 48, at 93-101. *Shari'a* law derives from the *Quran*, and is therefore religious in nature. However, it is still subject to extensive interpretation, and political motives can cause two sets of *Sharia* law to look very different from each other. For example, under the *Ayatollah* Khomeini, *Sharia* scholars, called *faqaha*, were given authority over the courts which were formerly secular. Khomeini quickly replaced the *faqaha* who did not enforce his interpretations of *Sharia* law. Thus, Khomeini acquired absolute control over the Iranian judicial system.

79. WOMEN'S MOVEMENT, *supra* note 48, at 95-97 (citing Civil Code of Iran, Arts. 1121, 1122, 1129, 1130, 1133, and 1134) (stating that the wife could only apply for divorce in very limited situations such as the husband's impotence, insanity, inability to provide for the wife, ill treatment, or contagious disease).

80. WOMEN'S MOVEMENT, *supra* note 48, at 95-97.

81. Zahra Kamalkhani, *Women's Everyday Religious Discourse in Iran*, in MIDDLE EAST, *supra* note 41, at 91-92 (confirming the importance of religious discourse on women's rights by socializing Iranian women against desire for equality with men. Iranian women are taught from a young age that they are secondary to men sexually because of body-type. This secondary position is supported by the *Quran*, which states that women are weak and sexual temptresses. The *Quran* is the justification used for enforcing the *chador*, and the socialization process that goes along with this teaching tends to eliminate any desire for sexual equality. Iranian women have more pressing goals to achieve first, such as the freedom of movement, dress, and speech.).

82. The *Quran*, *Sura Women*, Verse 34. "Men are in charge of women, because Allah hath made the one of them to excel the other, and because they [men] spend of their property [for the support of women]."

reason.<sup>83</sup> While women have to meet one of twelve very specific criteria supported by a *Shari'a* judge, currently in Iran, men can divorce at will.<sup>84</sup>

If the husband can prove an indiscretion with only a minimal amount of evidence, Iranian men can force their wives to forfeit their *mahr* in divorce proceedings.<sup>85</sup> When their husbands divorce them, Iranian women lose all of their assets from the marriage, including clothing, and they and their children are left at the complete will of the husband for survival.<sup>86</sup> Women also lose custody of their children to the husband when boys turn the age of two and girls the age of seven.<sup>87</sup>

After the 1979 Revolution there was a wide-spread repeal of the progressive rights which women obtained during the previous government.<sup>88</sup> As a result, almost every women's organization in Iran has made the expansion of rights for women concerning divorce its

83. The Quran, *Sura Women*, Verse 4. "The Koran does not ... give the same rights in divorce to women as it gives to men. The decision to divorce is ultimately left to men." MINOU REEVES, *FEMALE WARRIORS OF ALLAH: WOMEN AND THE ISLAMIC REVOLUTION* 37 (1989) [hereinafter *FEMALE WARRIORS*].

84. MIDDLE EAST, *supra* note 41, at 65 (the wife must establish one of the following conditions to obtain a divorce: 1. the husband's failure to support her or to fulfil other compulsory duties for at least six months; 2. the husband's maltreatment (of the wife) to the extent that the continuation of the marriage has been rendered untenable for her; 3. the husband's affliction with any incurable disease that may endanger her health; 4. the husband's insanity in cases where *Shari'a* does not allow the annulment of marriage; 5. the husband's failure to comply with a court order to abstain from an occupation which is repugnant to the wife and her position; 6. the husband's sentence to a prison term of five or more years, or failure to pay a fine which results in his imprisonment for a period of five years or more; 7. the husband's addiction to anything harmful, which according to the court's judgment is detrimental to family life and renders the continuation of marital life difficult for the wife; 8. the husband's desertion of marital life without just cause for more than six months (the court decides on the question of his desertion and on the acceptability of the excuse); 9. the husband's conviction for any offense or sentence including *had* (fixed Islamic punishment for certain crimes) and *ta'zir* (discretionary punishment awarded by the *Hakim-I Shari'a*, *Shari'a* judge) that is repugnant to the family and position of the wife; 10. the husband's failure to father a child after five years of marriage; 11. the husband's disappearance and the failure to find him within six months of the wife's application to the court; 12. the husband's second marriage without the consent of the first wife or his failure to treat co-wives equally).

85. The Quran, *Sura Women*, Verse 36 (asserting that couples seeking divorce must first go through arbitration).

86. MIDDLE EAST, *supra* note 41, at 67 (discussing *Sharia* law, which states that after a divorce the wife must return to her family. If her family refuses to take her back, she is left desolate, with no income or property. She may have her *mahr*, which will only sustain her for a short period of time. Her children will be taken from her if they are old enough, and small babies may be abandoned with her or taken from her, as the husband decides. Thus, Iranian wives are left completely at the mercy of their husbands, and many live in fear of divorce.).

87. MIDDLE EAST, *supra* note 41, at 67 (indicating that a mother could only retain custody of her children if there is no living male relative including cousins, uncles, brothers, fathers, grandfathers, and all male relatives of the husband old enough to assume custody.).

88. SHADOW, *supra* note 6, at 132-39.

top priority.<sup>89</sup> Women's rights in divorce were made a top priority in the belief that with these rights, Iranian women could achieve a more stable position in society.<sup>90</sup> Without these rights, women are in a continuous state of disempowerment, relying solely on the generosity of their husbands.<sup>91</sup>

A final major right that Iranian women continue to strive for is autonomy in dress.<sup>92</sup> In Islam the *hejab*, or dress code, has many different interpretations.<sup>93</sup> The *Quran* demands that a woman be covered except for the oval of her face and her hands. Iran, however, is more extreme and requires that a woman wear a *chador*, a full veil that generally allows only slits for the eyes.<sup>94</sup> Iranian religious scholars believe that the appearance of an unveiled woman in public is an attack on the very pillars of the morality of the Muslim community.<sup>95</sup> This dress is extremely restrictive and burdensome for Iranian women.<sup>96</sup> In 105° heat, women experience health risks from the heavy black cloth draped in as many as five different layers.<sup>97</sup>

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89. SHADOW, *supra* note 6, at 112-42. The two major women's rights groups in Iran, the *Sazeman Vahdat Komonisti Rahai* and the *Mojahedeen*, list divorce rights as one of their top priorities while other organizations that are not as prominent, such as the Patriotic Women's League and the Daughters of Iran, also listed divorce rights as a major goal. *Id.*

90. MIDDLE EAST, *supra* note 41, at 63-68.

91. MIDDLE EAST, *supra* note 41, at 63-68.

92. *Mujahidin-eKhalq, On the Question of Hejab*, in SHADOW, *supra* note 6, at 126-27 (supporting the women's protest march against wearing full *hejab* on Mar. 12, 1979).

93. SHADOW, *supra* note 6, at 23.

94. The *Qur'an*, *Sura Light*, Verse 30-31, "And say to the believing women that they lower their gaze and restrain their sexual passions and not display their adornment ..."; See SOUSAN AZADI, *OUT OF IRAN* 223 (1987) (describing what it felt like to wear a full *chador*. "As I pulled the *chador* over me, I felt a heaviness descending over me.... There was nothing visible left of Sousan Azadi.... I was just another faceless Moslem woman carrying a whole inner world hidden inside the *chador*." *Id.*).

95. SHADOW, *supra* note 6, at 23.

96. Group of Iranian Women, *On the Situation of Iranian Women: A Report from Iran*, 4 WOMEN & STRUGGLE 5 (proclaiming burdensome nature of restrictive measures on Iranian women). Iranian women are expected to wear thick socks, pants that reach the ankles, a heavy, long coat, with no tailoring, called a *montee*, a heavy scarf which is wrapped around the head to cover any sign of hair, called a *roosarie*, and, finally, a *chador*, which is a large, half-moon shaped cloth entwined around the shoulders, forehead, and chin to reveal only the eyes, nose, and mouth. Many Iranian women hold the *chador* with their teeth so that only one eye will show. This outfit severely restricts movement and is compulsory even in the sweltering heat of an Iranian summer. See BETTY MAHMOODY, *NOT WITHOUT MY DAUGHTER* 5, 10-11 (1987); "Even within 'tradition' there are changes, as unveiled village women have been made to veil by their religious leaders once modern roads brought in strangers, and many urban women sport the top-to-toe black skirt, cape and face veil that used to be reserved by the Imam's family. Its rapid spread after the Imam's overthrow led it to be called 'the banner of the revolution.'" KEDDIE, *supra* note 10, at 198.

97. MAHMOODY, *supra* note 96, at 10-11. -

The worst aspect of the Iranian *hejab*, however, is its implementation in society.<sup>98</sup> The *Hezbollah*,<sup>99</sup> in their role as enforcers of the moral code, have beaten, whipped, and stabbed women who let a piece of hair fall from their head scarf.<sup>100</sup> They have thrown acid in the faces of women whose veils blew up in the wind.<sup>101</sup> Women live in constant fear of being arrested for not wearing the *hejab* properly.<sup>102</sup> Arrest can mean interrogation with torture,<sup>103</sup> rape, and further charges of prostitution and adultery which can lead to a sentence of death.<sup>104</sup>

Most Iranian women's movements take on unusual characteristics as compared to overall concepts of western feminism.<sup>105</sup> For example, strong and distinct lines are drawn between the various classes of Iranian society, and these class differences affect women's organiza-

98. See David L. Neal, *Women As a Social Group: Recognizing Sex-Based Persecution as Grounds for Asylum*, 20 COLUM. HUM. RTS. L. REV. 203, 219 (1988) (confirming the repressive nature of criminal law for women in Iran, such as punishment of 74 lashes for any woman caught without complete *hejab* in public).

99. The *Hezbollah*, or Party of God, are a pro-Iranian, pro-Khomeini organization that is loosely guided and sanctioned by the Iranian government. Their purpose is to enforce the moral codes that have been made into law. They frequently carry out their surveillance and punishments on the streets for public edification. The *Hezbollah* do not deal solely with women, but female *Hezbollah* generally take care of female digressions from the moral code. Because Iran is a theocratic state, the *Hezbollah* are funded by the government/religious institution, or the leadership of Iran. The *Hezbollah* are sanctioned like the police department, but have jurisdiction only over moral violations. They can enforce punishments, or jail violators for later investigations. KEDDIE, *supra* note 10, at 120.

100. There are no definitive numbers as to how many women have been executed for violating *Shari'a* law in Iran, but estimates go as high as 500,000 executions in a little under two decades. FEMALE WARRIORS, *supra* note 83, at 171.

101. Neal, *supra* note 98, at 220.

102. It is almost impossible to keep the *chador* on properly. One hand must be used at all times to keep the garments from slipping and allowing hair or the neck to show. MAHMOODY, *supra* note 96, at 5.

103. The meaning of torture used here is that of the definition in the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, June 26, 1987, art. 1, 39 U.N.T.S. 46. For the purposes of this convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him [sic] or a third person information or a confession, punishing him [sic] for an act or a third person, or for any reason based on discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. *Id.*

104. Fact Sheet, *supra* note 5 (detailing the current legal, social and economic statistics of women in Iran on issues including dress code, adultery, sexuality, treatment of women prisoners, etc.).

105. Haideh Moghissi, *Women in the Resistance Movement in Iran*, in MIDDLE EAST, *supra* note 41, at 158-71 (suggesting that the flaw in Iranian feminism is weak organization).

tions.<sup>106</sup> Almost no Iranian women's organization has ever attempted to unite for the common good of women while disregarding political or class agendas.<sup>107</sup> Upper class Iranian women often have no labor obligations in the home and can spend more time on social and educational activities like upper class women in the United States.<sup>108</sup> Even though they have lower educational levels than their husbands, these women are usually better educated than their lower-class counterparts.<sup>109</sup> Therefore, there is a social stigma ingrained in Iranian culture against association between classes,<sup>110</sup> and many lower class women who do not have the resources or time in the day to organize their own "feminist" groups often are left behind.<sup>111</sup>

It is important to stress that not all Iranian women are concerned with improving the rights of women under the *Shari'a*.<sup>112</sup> Many women fully support the regime and believe that the laws of the Iranian theocrats are the laws of Allah and must be obeyed.<sup>113</sup> For these fundamentalist women, Iranian women are not inferior to men, but rather have a different set of protected rights because of their gender.<sup>114</sup> Most of these women feel that both men and women can achieve fulfillment through different means.<sup>115</sup>

The majority of Iranian women are in a much more precarious position than western women in their fight for rights.<sup>116</sup> While many

106. MIDDLE EAST, *supra* note 41, at 158-71. Most women's organizations are composed of upper class women who do not wish to associate with lower class women. The upper class composition of women's organizations creates problems because lower class, uneducated women feel ostracized and helpless to form their own groups. As a result, many lower class women supported Khomeini because they were told he was a supporter of Islam and that feminists were atheists.

107. MIDDLE EAST, *supra* note 41, at 158-71; Nahid Yeganeh, *Women's Struggles in the Islamic Republic of Iran*, in SHADOW, *supra* note 6, at 29. Unlike western feminism where the binding factor is its autonomous and woman-only nature, which is based on a rejection of hierarchical, centralized organization of political parties, feminist activism in Iran is dependent on the social and political atmosphere of the time.

108. SHADOW, *supra* note 6, at 7-11.

109. SHADOW, *supra* note 6, at 7-11.

110. KEDDIE, *supra* note 10, at 253 (noting that as is typical of most countries, the most politically active women come from upper and middle class backgrounds. More likely than not, these women come from modern rather than traditional environments. Because of this wide social gap, rural women and those from the popular class have been left behind, both in ideology and organization.).

111. Rhoadie, *supra* note 8, at 379.

112. WOMEN'S MOVEMENT, *supra* note 48, at 140-44.

113. WOMEN'S MOVEMENT, *supra* note 48, at 140-44.

114. WOMEN'S MOVEMENT, *supra* note 48, at 140-44.

115. WOMEN'S MOVEMENT, *supra* note 48, at 140-44.

116. *Fatin*, 12 F.3d 1233 (3d Cir. 1993) (arguing that women who refuse to conform in Iran are severely persecuted for protesting *Shari'a* law in ways that are legal for western women).



western women faced jail, beatings, and physical and psychological torture in order to get the right to vote,<sup>117</sup> many Iranian women face these conditions both inside and outside the home every day.<sup>118</sup> While active women's rights supporters face severe punishment,<sup>119</sup> those who do not speak out live in constant fear of crossing the blurry line of *Shari'a* law.<sup>120</sup> Most Iranian women have greater needs to fulfill before they have the power to utilize the right to vote. Consequently, they may never attempt to obtain or even desire sexual equality.<sup>121</sup> Iranian women activists are different by necessity from their western counterparts. Therefore, an analysis of their achievements must also be different in order to completely understand the place of women in Iranian society.<sup>122</sup>

### PART III: WOMEN BEFORE THE REVOLUTION: A LEGAL STATUS IN FLUX

Pre-Islamic women had a great deal of liberty and power in Persian society.<sup>123</sup> Women could own property, gain custody of a minor after divorce, and defend their rights in court.<sup>124</sup> Contrary to other countries in the Middle East, however, veiling was not re-

117. FULFORD, *supra* note 52, 235-42.

118. WOMEN'S MOVEMENT, *supra* note 48, at 136-40.

119. *Fatin*, 12 F.3d at 1233.

120. Two women were stoned to death recently for the crime of "depravity". London human rights groups also report that Iranian officials are now jailing girls for laughing aloud in public. *Iranian News Roundup*, in IRAN BULLETIN (Spring 1995) (on file with author); L. BONNERJEA, SHAMING THE WORLD: THE NEEDS OF REFUGEE WOMEN 6 (1985) (concluding that women face persecution every day in Iran for events over which they have no control. The *Hezbollah* continually attack and arrest women for offenses which they perceive, even if the offenses are not real.).

121. SHADOW, *supra* note 6, at 136-38.

122. SHADOW, *supra* note 6, at 27-28 (commenting that taking the values which are the most relevant to the West as universal, leads to an uncritical analysis of the Iranian woman's situation). "The different settings of the women's movement, and the various situations from which they arise, provide [women's movements] with ... objectives that are specific to them and distinct from Western feminism." *Id.*

123. Persia is roughly the geographical and cultural ancestor of Iran. An interesting comparison is therefore made between the legal status of women during this time period and the current legal status of women in Iran. Many aspects of the law have changed since this period, but many have remained, and a compelling argument can be made that Iranian women who supported the *Ayatollah Khomeini* in the hope for a better legal status were misguided in their assumption of a return to this period. Persian women had property, speech and divorce rights. They still had less status than their male counterparts, but they had far more autonomy in dress and socialization. Ghodsi, *supra* note 63, at 654.

124. See PARI SHAYKH OL-ISLAMI, ZANAN RUZNAMAHNEGAR VA ANDISHEMAND IRAN [THE WOMEN REPORTERS AND THINKERS OF IRAN] 63 (1972); KEDDIE, *supra* note 10, at 250 (agreeing that the principles Islam afforded women legal protection for property and inheritance, even if the laws were not followed).

quired.<sup>125</sup> The spread of Islam and the implementation of the *Quran* through *Shari'a* law changed this position significantly.<sup>126</sup> The *Quran* states that men are protectors and maintainers of women, because God has chosen to give men more strength.<sup>127</sup> *Shari'a* scholars interpreted this to mean that women were to be revered as the mother and base of the family<sup>128</sup> and implemented this by restricting women to raising families, and by denying them property and legal rights.<sup>129</sup> To justify barring women from most professions, limiting their right to divorce, and allowing husbands or fathers to dominate, the Iranian judicial system utilizes the *Quran* and studies conducted by Iranian theologians on the psychological differences between men and women.<sup>130</sup>

In 1967, the *Shah*, son of *Reza Shah Pahlavi*, whose father created a dictatorship for his family in Iran in 1925, enacted the Family Protection Act in an effort to appear more modern to the outside world and to ease some of the *Shari'a* restrictions on women.<sup>131</sup> The Act established family courts whose sole purpose was to handle divorce and child custody cases in a civil court.<sup>132</sup> Women gained the right to divorce on the same grounds as men, and both men and women had to go through a civil court to obtain a divorce.<sup>133</sup> The minimum age that women could marry was also raised from fifteen to eighteen.<sup>134</sup> The *Shah* legalized abortion and created family planning and day care centers for women who wished to work.<sup>135</sup> Finally, the *Shah* severely curtailed men's right to polygamy.<sup>136</sup> Numerous women became professionals, entered courts as judges and lawyers and flooded

125. LEILA AHMED, *WOMEN AND GENDER IN ISLAM* 14 (1992). Many Assyrian countries required women of higher classes to veil, while harlots and slaves were forbidden to veil.

126. Ghodsi, *supra* note 63, at 653.

127. The *Quran*, *Sura Women*, Verse 33. "Men are in charge of women, because Allah hath made the one of them to excel the other... "

128. Ghodsi, *supra* note 63, at 654-56.

129. Ghodsi, *supra* note 63, at 654-56.

130. SHADOW, *supra* note 6, at 103-07 (declaring that men are proper protectorates for women); Shireen Mahdavi, *The Position of Women in Shi'a Iran: Views of the 'Ulama*, in *WOMEN AND THE FAMILY IN THE MIDDLE EAST: NEW VOICES OF CHANGE* 255, 258 (E. Fernia, ed. 1985) (commenting on the lack of legal power for Iranian women).

131. Ghodsi, *supra* note 63, at 658.

132. Ghodsi, *supra* note 63, at 658.

133. Ghodsi, *supra* note 63, at 658.

134. *WOMEN'S MOVEMENT*, *supra* note 48, at 94-97 (discussing how the Family Protection Act maintained the delicate balance between *Shari'a* law and secular law that *Reza Shah* implemented in order to modernize Iran).

135. *WOMEN'S MOVEMENT*, *supra* note 48, at 94-97.

136. *WOMEN'S MOVEMENT*, *supra* note 48, at 94-97.

universities.<sup>137</sup> In 1978, the enrollment at Teheran University was forty-three percent female.<sup>138</sup>

The most striking legal right that the *Shah* enacted was mandatory unveiling.<sup>139</sup> The *Shah* ordered women to dress in a more modern fashion in order to speed up the modernization of Iran, which he saw as necessary for Iran's economic survival.<sup>140</sup> Many women were resistant to unveiling at first, as veiling was viewed as a religious act of faith.<sup>141</sup> Gradually, though, women began to unveil all across the country.<sup>142</sup> The *Shah* allowed women to work in the fields side by side with unrelated men without the burden of the heavy *chador*. The permission to work without a *chador* gave immense freedom of movement to urban women, and even more so to rural women.<sup>143</sup>

The position of many women in Iran just before the Revolution was, in many ways, better than the position of most women in the rest of the Middle East.<sup>144</sup> In much of the Middle East, society still considered women the property of men due to societal norms left from tribal days.<sup>145</sup> In Egypt, for example, polygamy and clitoridectomy were still legal and wide-spread practices.<sup>146</sup> Premarital relations

137. William R. Darrow, *Woman's Place and the Place of Women in the Iranian Revolution*, in *WOMEN, RELIGION AND SOCIAL CHANGE* 307-19 (1991) (averring that women had rights pre-Khomeini, but still hoped for more from the Revolution).

138. *Id.*

139. BROOKS, *supra* note 19, at 24 (discussing the negative impact that this decision had on many Iranian women).

The so-called liberating edict became a form of imprisonment. Men who had just begun allowing their daughters to attend school revoked their permission when it meant girls walking to class uncovered. Women who disobeyed the *Shah's* order and ventured into the streets veiled risked having their coverings ripped off and scissored by soldiers. *Chador*-wearing women were forbidden to use public transportation and denied entry to many stores. Rather than risk such humiliation, many women simply stayed inside. *Id.*

140. BROOKS, *supra* note 19, at 23 (maintaining that "Reza Shah wanted his country to look modern and he thought the ancient black cloak didn't").

141. FEMALE WARRIORS, *supra* note 83, at 85-89 (describing the difficulty with forced unveiling among Iranian women. *Reza Shah* had no great respect for women, and the law regarding unveiling was not for the rights of women, but for the modernization of Iran. He had great difficulty initially enforcing the law, but eventually women began to realize the advantages of not wearing the burdensome *chador*, and a majority of women discarded the veil.).

142. FEMALE WARRIORS, *supra* note 83, at 85-89.

143. FEMALE WARRIORS, *supra* note 83, at 85-86.

144. WALTHER, *supra* note 42, at 187 (comparing the position of Iranian women to women of other Middle Eastern nations); *WOMEN AND THE LAW IN THE NEAR EAST: LEGAL AND REGULATORY CONSTRAINTS TO WOMEN'S PARTICIPATION IN DEVELOPMENT*, Final Report, May 1995, United States Agency for International Development (comparing differences between Iranian women and women of other Middle Eastern nations).

145. WALTHER, *supra* note 42, at 187.

146. AHMED, *supra* note 125, at 175-76.

in Saudi Arabia were punishable by death.<sup>147</sup> Women were still forbidden from owning property independently of their husbands in most of the middle eastern nations.<sup>148</sup> Even though Turkey officially adopted the Swiss civil law in 1926, most families still enforced the *Shari'a* law which allows for polygamy and *talaq*, or repudiation of the wife.<sup>149</sup>

The majority of Iranian women had many more freedoms before the 1979 Revolution.<sup>150</sup> However, this did not necessarily mean a better standard of living.<sup>151</sup> The *Shah's* economic program created a great strain on the Iranian people, and ultimately was not successful.<sup>152</sup> Many families, especially in rural areas, suffered as a result of these economic changes.<sup>153</sup> This suffering and the general feeling that the *Shah* was a dictator and was moving away from Islam, prompted the revolution of 1979.<sup>154</sup> The women who participated in the Revolution had every hope that it would change their lives as well.<sup>155</sup> Unfortunately for them, it did.

147. AHMED, *supra* note 125, at 175; MONA N. MIKHAIL, IMAGES OF ARAB WOMEN - FACT AND FICTION 13 (1978).

148. ARAB WOMEN - OLD BOUNDARIES, NEW FRONTIERS 70 (Judith Tucker ed., 1993). Saudi Arabia, Egypt, Tunisia and Iraq all forbid ownership of property by women.

149. ENGINEER, *supra* note 29, at 126 (claiming that "this form of divorce [*talaq*] has become an integral part of Islamic *Shari'ah* among the *Sunni* Muslims. It is widely practiced throughout the Islamic world."); WALTHER, *supra* note 42, at 176.

150. Fact Sheet, *supra* note 5, at 185. Prior to the Khomeini government, women were allowed to participate in public life. However, the reinstitution of *Shari'a* forced women into seclusion in their homes.

151. Fact Sheet, *supra* note 5, at 183.

152. MOHAMMED AMJAD, IRAN: FROM ROYAL DICTATORSHIP TO THEOCRACY 101-02 (1989) (describing the ultimate failure of *Shah's* regime and its cataclysmic effect on the 1979 Revolution); MORRIS M. MOTTALE, IRAN: THE POLITICAL SOCIOLOGY OF THE ISLAMIC REVOLUTION 28 (1994) (discussing the complicated reasons behind the Revolution, and stating that, "[t]he *Shah's* decisions were certainly a crucial and necessary factor in fanning the discontent that lead to Khomeini's success. A more fruitful perspective on the long run causes of the revolutionary phenomenon in Iran would have to take into account the historical meaning of modernization, its European roots, and the social, political, and cultural evolution of Western Europe since the 14th century.").

153. *Id.*

154. See KEDDIE, *supra* note 10, at 13 (claiming that "a frequent refrain of the literature on the Iranian or 'Islamic' Revolution of 1978-79 [is] that the Revolution could and should have been predicted if only more people had found out and heeded what Iranians were thinking").

155. Nashat, *supra* note 10, at 198-99; "Gender relations have usually been central concerns in Islam, and contesting existing gender relations has often been a central element of revolt and resistance. The centrality of gender relations is clearly still true today, when struggles by both modernized and Islamic women are very important to the definition of society." KEDDIE, *supra* note 10, at 256 (1995).

#### PART IV: KHOMEINI'S INFLUENCE ON THE CURRENT STATUS OF IRANIAN WOMEN

The current state of affairs in Iran is crucially linked to the Revolution of 1979 which brought the *Ayatollah* Khomeini to power.<sup>156</sup> Khomeini wasted no time in implementing legal restrictions on women.<sup>157</sup> Khomeini's wife appeared on television in full *hejab* two weeks after Khomeini's rise to power to tell all Iranian women what she felt the proper behavior of women should be.<sup>158</sup> Shortly thereafter, Khomeini repealed the Family Protection Act<sup>159</sup>, and in the space of a few months women lost every substantive right that they had gained under the *Shah*.<sup>160</sup> Khomeini ordered women to wear the full *hejab* any time they were in the presence of unrelated men, with many families implementing full *hejab* in front of anyone but the husband.<sup>161</sup> Khomeini barred the importation of all cosmetics.<sup>162</sup> Khomeini compared these new laws to Western laws against indecent exposure, stating that Muslim societies simply had higher standards of modesty.<sup>163</sup> He used the constitutional guarantee of care for all pregnant women and women with small children (initially created by the *Shah's* regime to help working mothers), to support the theory that women should work at most, part time, and preferably only in the home.<sup>164</sup>

Khomeini wanted to ensure the implementation of his laws, especially the ones concerning the traditional Islamic view of women.<sup>165</sup> As a result, Khomeini fired all female members of the judiciary told them to find clerical positions.<sup>166</sup> Khomeini also fired all government employees who refused to wear the *chador* causing hundreds of

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156. Fact Sheet, *supra* note 5, at 183.

157. Fact Sheet, *supra* note 5, at 183, 188.

158. Anderson & Van Atta, *supra* note 3, at B15.

159. Ghodsi, *supra* note 63, at 657.

160. *Escape*, *supra* note 3, at 213.

161. *Escape*, *supra* note 3, at 213.

162. Fact Sheet, *supra* note 5 (detailing the current statistics that reveal the desparing status of women's rights in Iran).

163. Reisman, *supra* note 4, at 509.

164. Hegland, 'Traditional' Iranian Women: How They Cope, 36 MIDDLE E. J. 483, 499 (1982); DESEIFE, *supra* note 15, at 55 (describing the difference between Iranian Islam and most other sects of Islam: "... women, according to [most] Muslims, are not forbidden to take part in any outside activity when necessary, nor is there any injunction in the Quran, or the tradition of shutting them up within the walls of their homes.").

165. SHADOW, *supra* note 6, at 15.

166. SHADOW, *supra* note 6, at 15.

women to lose their jobs.<sup>167</sup> The family courts were eliminated and Khomeini delegated all legal cases involving women to the *Shari'a* courts run by Islamic theologians.<sup>168</sup> He also reinstituted the ancient punishment of stoning for adultery for both men and women.<sup>169</sup>

The worst aspect of Khomeini's implementation was the creation of two separate authorities to ensure that women obeyed their new restrictions.<sup>170</sup> The Mobile Units of God's Vengeance and the *Hezbollah* enforced dress codes by physical threats.<sup>171</sup> Any woman found unveiled on the street would receive seventy-four lashes.<sup>172</sup> The Khomeini government sanctioned these attacks on women for so-called immodesty. The government went as far as to say that no one acting on behalf of these groups could be punished for their actions toward women.<sup>173</sup>

As the courts began making decisions under the new rules, they al-

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167. WOMEN'S MOVEMENT, *supra* note 48, at 129, 132 (detailing features of the 1979 Constitution in Iran, such as Article 21(a) which states that "[t]he government must assure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the goals of creating a favorable environment for the growth of woman's personality and restoring her rights, tangible and intangible." Islamic scholars interpreted this to mean that women should be removed from significant office positions where they could be tempted to become something other than a true Iranian mother.).

168. WOMEN'S MOVEMENT, *supra* note 48, at 129, 132.

169. See BROOKS, *supra* note 19, at 46 (describing the punishment of stoning).

Today, in Iran, men to be stoned are buried up to their waists, women to their chests, and the sizes of the stones are carefully regulated. Neither boulders nor pebbles may be used, so that death is neither mercifully quick nor endlessly prolonged.... [T]hose who have recently witnessed stonings describe all-male crowds ... [T]he mood is commonly one of rage and bloodlust ... an outlet, perhaps, for the men's guilt at their own uncontrollable sexuality.... [B]ecause of the way she is buried, each impact snaps [the woman's] neck backward in a series of excruciating whiplashes. Death often comes when her head is knocked completely off.

BROOKS, *supra* note 19, at 46.

170. *Escape*, *supra* note 3, at 179, 213.

171. See STORIES BY IRANIAN WOMEN SINCE THE REVOLUTION 134 (Farzaneh Milani ed., 1991) (describing what it is like to live under the repression of the *Hezbollah*).

"You must be a woman to understand how much of the efforts of this massive body of turpitude [the *Hezbollah*] is directed toward the creation of devices to make women believe that they are contemptible.... As insignificant as it may seem to you, your struggle to hold up your chin and your endeavor to convince yourself that you exist, is an expression of our freedom - despite those vultures' attempt to reduce our existence to those of slaves whose only recognized right is to breathe. *Id.*

172. *Escape*, *supra* note 3, at 179, 213.

173. *Escape*, *supra* note 3, at 179, 213. For example, it was announced in the mid-1980s that *Hezbollah* thugs who assaulted women for insignificant infractions were immune from prosecution because they were acting under the will of God.

lowed shocking enhancements of the law to occur.<sup>174</sup> The courts officially lowered the minimum age of marriage for women back to thirteen, but the courts began to allow marriages at age ten and fathers to arrange their daughter's marriages at birth.<sup>175</sup> The courts also began to allow men who murdered women to go free because of a legal loophole.<sup>176</sup> Men who caught their wives committing adultery in any of its broad definitions could kill their wives with little thought of punishment under the *Shari'a* law.<sup>177</sup> However in Iran, men who murdered women for other reasons would be punished according to the "eye for an eye" jurisprudence of Islam, but *only* after the woman's family paid the man's "blood price," or what the man is worth as a worker in his family.<sup>178</sup> Until the man received payment, which was usually far too expensive for the average family to afford, punishment could not be exacted.<sup>179</sup> When a woman murdered a man, however, there was no requirement to pay the blood price.<sup>180</sup> The woman's life was taken for the man's life immediately.<sup>181</sup> The only thing to stop the punishment of a woman was her menstruation or the birth of a child.<sup>182</sup>

Khomeini announced that Iranian women were no longer simply female citizens, but "Muslim housewives," whose purpose in life was

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174. FEMALE WARRIORS, *supra* note 83, at 150-52 (illustrating the type of laws imposed by Khomeini after his rise to power in 1979, including banishment from all executive and legal posts, denial of any rights regarding divorce, movement, or education. The changes also included provisions for stoning any woman accused of adultery, and the punishment of slavery for any woman accused of political crimes. Soldiers received these political prisoners as concubines.).

175. FEMALE WARRIORS, *supra* note 83, at 150-52.

176. Neal, *supra* note 98, at 217. Iranian men can murder their wives without fear of legal consequences; as long as his position is "righteous," the murder is excusable.

177. Rhodie, *supra* note 8, at 377 (stating that, "if a man witnesses his wife in the act of intercourse or a situation which could be construed as being engaged in intercourse with a man other than her husband and injures or murders one or both of them, he is immune from punishment." This law has been used to exculpate a brother who saw his sister emerge from a taxi with a stranger and immediately killed her.).

178. See PETRUSHEVSKY, *supra* note 14, at 136 (noting that "only half the *diya* [blood price, or compensation] is payable for the murder of a woman"); DESEIFE, *supra* note 15, at 63 (explaining that, "[w]hen the murderer cannot be discovered, the blood money (*diya*) is paid from the state treasury, a concept not unlike our trend in adopting victim compensation statutes in the United States").

179. DE SEIFE, *supra* note 15, at 63.

180. *But see* PETRUSHEVSKY, *supra* note 14, at 136 (noting that, "... the Koran nevertheless recommends the relatives of the slain to pardon the slayer, since forgiveness is pleasing to Allah").

181. Neal, *supra* note 98, at 210-22.

182. Neal, *supra* note 98, at 210-22.

to give Iran many sons who would be true Muslims and citizens.<sup>183</sup> This idea of Iranian women being muslim housewives was used to justify the many laws regarding the seclusion and veiling of women.<sup>184</sup> According to Khomeini, women should be secluded in order to ensure that their sole thought would be the family.<sup>185</sup> He also wanted to keep women out of the sight of men, who supposedly would be tempted by their seductiveness and led astray from their own families.<sup>186</sup>

There is an important distinction between the traditional interpretation of *Shari'a* law and Khomeini's interpretation of *Shari'a* law.<sup>187</sup> A perfect example is Khomeini's ruling on the religious obligations of women.<sup>188</sup> Here he clearly differed with the actual words of the *Quran*.<sup>189</sup> According to the *Quran*, women must disobey their husbands if obeying meant breaking an Islamic law.<sup>190</sup> Islam is the highest religious and secular authority in Iran for both men and women, and expressly forbids sexual contact during the time of menstruation or when a woman is nursing.<sup>191</sup> Khomeini, however, ruled that men could break this law under "special circumstances."<sup>192</sup> These special circumstances were never clearly defined.<sup>193</sup> The *Quran* also requires

183. *Ayatollah Khomeini*, Speech on the Occasion of Fatima's Birthday When First Proclaimed as Iranian Women's Day (May 19, 1979) in SHADOW, *supra* note 6, at 100-02.

184. *Ayatollah Khomeini*, Speech on the Occasion of Fatima's Birthday When First Proclaimed as Iranian Women's Day (May 19, 1979) in SHADOW, *supra* note 6, at 100-02.

185. WOMEN'S MOVEMENT, *supra* note 48, at 135 (stating that "[a] married woman should not leave the house without the permission of her husband. She should submit herself to all his pleasures and without a religious excuse, must not refuse having sex with him."); AYATOLLEH KHOMEINI, RESALEH-YE TOZIH OL-MASAEEL [THESIS ON THE CLARIFICATION OF DILEMMAS] (1979), in WOMEN'S MOVEMENT, *supra* note 48, at 135.

186. WOMEN'S MOVEMENT, *supra* note 48, at 135.

187. Telephone Interview with Bharathi Zenkatraman, L.L.M. in *Shari'a* Law at the Washington College of Law at American University (July 15, 1995).

188. Haleh Afshar, *Khomeini's Teachings and Their Implications for Iranian Women*, in SHADOW, *supra* note 6, at 85-86.

189. Haleh Afshar, *Khomeini's Teachings and Their Implications for Iranian Women*, in SHADOW, *supra* note 6, at 85-86.

190. The *Quran*, *Sura Women*, Verse 48:6. However, Khomeini does not feel women should have such independence. Even when a woman is attempting to fulfill a religious obligation, a husband's direction can overrule such an act. For example, a husband may interrupt his wife's fast, despite the fact that it is her religious duty. Similarly, while the *Quran* dictates that both men and women can make a *nazr* (a religious vow), Khomeini insists that women and the insane cannot participate in such actions.

191. SHADOW, *supra* note 6, at 85-86.

192. FRIEDMAN, *supra* note 42, at 23; see also BROOKS, *supra* note 19, at 39 (noting that "Islam is one of the few religions to include sex as one of the rewards of the afterlife - although only for male believers. One of the *Quran's* many descriptions of paradise reads like a brochure for a heavenly whorehouse.").

193. SHADOW, *supra* note 6, at 85-86.



that Muslims do good deeds, or *nazr*.<sup>194</sup> Khomeini said, though, that only sane and mature people can make *nazr*.<sup>195</sup> According to Khomeini, a woman is the mental equivalent of a child and therefore has no legal right to contract for *nazr* without her husband's explicit permission.<sup>196</sup> Khomeini had the total power to enforce these laws because he had successfully created a theocracy after rising to power.<sup>197</sup> This theocracy was run under his control, but at the same time there was a complete consolidation of civil law and *Shari'a* law.<sup>198</sup> This consolidation allowed Khomeini to support his regressive interpretation of the *Quran* with the authority of *Shari'a* scholars.<sup>199</sup>

All Islamic codes give more credence to a man's testimony in court than a woman's,<sup>200</sup> but the Iranian legal code goes further. In addition to a woman's testimony accounting for only half that of a man's (in effect requiring two women to testify for every man), in a murder case no testimony by women is allowed.<sup>201</sup> The subject matter is thought to be too important to allow a woman to testify to the guilt or innocence of the subject.<sup>202</sup>

The most striking legal change that Khomeini brought about was in regard to the *mut'a*, or temporary marriage.<sup>203</sup> The Iranian *Shari'a* doctrine, far from following the *Quran* on this point, distinguishes between permanent marriages for purposes of procreation and the establishment of family, and temporary marriages for the purpose of sexual pleasure for the man.<sup>204</sup> Women in these temporary marriages are treated like the object of a lease and the man can discard them at any time, breaking the contract.<sup>205</sup> The primary reasons given by Ira-

194. SHADOW, *supra* note 6, at 85-86.

195. SHADOW, *supra* note 6, at 85-86.

196. See PETRUSHEVSKY, *supra* note 14, at 149 (stating, "Swallowing the fiction of the equality of all the Muslims, the law looks on the contracting parties as enjoying equal rights. Needless to say, ... many a contract pretending to be between equals in reality placed one party at the mercy of the other.").

197. See PETRUSHEVSKY, *supra* note 14, at 149.

198. Bharathi Zenkatraman, L.L.M., *supra* note 187.

199. Bharathi Zenkatraman, L.L.M., *supra* note 187.

200. The *Quran*, *Sura Women*, Verse 2:282.

201. Neal, *supra* note 98, at 211, 215-16.

202. Neal, *supra* note 98, at 211, 215-16.

203. Russell Watson, *Iran's Crusade Falls Far Short*, NEWSWEEK, Aug. 22, 1988, at 32.

204. Ghodsi, *supra* note 63, at 660.

205. See PETRUSHEVSKY, *supra* note 14, at 231 (replicating an average contract for a temporary marriage).

nian theologians for the *mut'a* is the uncontrollable sexual desire of the man.<sup>205</sup> The social stigma attached to temporary marriage is therefore a negative one.<sup>207</sup> Most temporary wives are from lower classes and generally from large families.<sup>208</sup> The upper classes of Iranian society tend to look down on temporary wives and they are not accorded the same legal rights as permanent wives.<sup>209</sup> The only positive result of a temporary marriage for the wife is the legitimacy of her children, who the father must care for as he does the children of his permanent marriage.<sup>210</sup>

Khomeini may have forced a creation of a "feminist consciousness"<sup>211</sup> in Iran, but no strong national feminist movement has

Entering into the enjoyment is ... (here follows the full name with description of the man). Contributing to the enjoyment, sound of reason, of legal age, capable of acting unaided and mindfully is ... (here follows the full name of the woman). Duration: [x] lunar years from today's date, every day and every night. It shall be binding on the first party: to pay [x] qrans per mensem. This agreement of temporary marriage hereby comes into force and effect.

*Id.*

206. Ghodsi, *supra* note 63, at 669; but see BROOKS, *supra* note 19, at 4 (discussing the reasons given by the cleric Rafsanjani after the Iran-Iraq war in 1988. Rafsanjani "argued that the war had left a lot of young widows, many of them without hope of remarriage. Such women, he said, needed both material support and sexual satisfaction." These women's need for material support and sexual satisfaction was Rafsanjani's justification for temporary marriage). However, temporary marriages were of little value to women because often it was simply a mechanism to satisfy a man's sexual appetite, leaving the women vulnerable to exploitation.

207. See PETRUSHEVSKY, *supra* note 14, at 230 (stating that "... in a given case it [*mut'a*] might either be just a legal form of that prostitution which the *Shari'a* prohibits ... Moreover [the temporary bride] is so inferior socially to the lawfully wedded wife that Sayyid families do not allow their womenfolk to contract the *mut'a* marriage."); ENGINEER, *supra* note 29, at 114. "That it is (i.e. *mut'a*) an inferior form of marriage is admitted... It is thus not desirable unless there exists special reasons and circumstances calling for it and making the normal permanent marriage undesirable."

208. PETRUSHEVSKY, *supra* note 14, at 230; ENGINEER, *supra* note 29, at 114.

209. FEMALE WARRIORS, *supra* note 83, at 32 (describing the use of the majority of temporary marriages as a limited form of prostitution, generally in close proximity to holy shrines. The shrines are generally visited by men without their wives, and so the accepted explanation for the high number of temporary marriages is the "legitimate" sexual frustration of the men. The women that contract for these temporary marriages are generally widows or women who were sold at a young age by their father into a temporary marriage to supplement the income of the family. These women have even less social status than Iranian women in permanent marriages, because they cannot achieve the position of the female head of the household.).

210. FEMALE WARRIORS, *supra* note 83, at 32.

211. By using this phrase, the author implies that Khomeini forced many Iranian women into a fight for basic rights denied to them because of their gender by creating and enforcing specific laws regarding their gender. Some of the women who now oppose the Iranian regime might not have chosen to take a stand if they did not have the overwhelming set of social regulations restricting every aspect of their lives because of their gender.

emerged to fight his repressive measures.<sup>212</sup> Even after Khomeini's death, no strong women's movement has developed.<sup>213</sup> Again the answer seems to come in Iranian politics.<sup>214</sup> There is the *Shi'ite* viewpoint, which supports Khomeini's ideology to the letter, and the majority opposition party, which is heavily Marxist.<sup>215</sup> For most Iranian citizens, to join forces with the Marxist party is to deny the world of Islam, and this is extremely difficult for a woman brought up in Iranian society.<sup>216</sup> There is the additional problem that the Marxist women's organizations are more concerned with promoting Marxist ideas than feminist ideas.<sup>217</sup> The promotion of Marxist ideas as opposed to feminist ideas may account for the small feminist voice in Iran today.<sup>218</sup>

Some Iranian women have made the effort to further feminist ideals while outside of their country. In the case of *Fatin v. INS*,<sup>219</sup> an eighteen-year-old Iranian student entered the United States on a student visa.<sup>220</sup> She quickly applied for asylum and later for a court grant to stop her deportation.<sup>221</sup> Fatin stated that her political activities and membership in a particular social group of Iranian women opposed to the repressive measures imposed on Iranian women made her a target for repression and torture upon her return to

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212. But see FARZANEH MILANI, *VEILS AND WORDS: THE EMERGING VOICES OF IRANIAN WOMEN WRITERS* 231 (1992) (claiming that "[d]espite compulsory veiling, or perhaps partly as a reaction to it and its corollary side effects, women's literature flourishes in a proliferation of books, articles, and journals by and about women inside and outside the country.").

213. *Id.*

214. See KEDDIE, *supra* note 10, at 199 (trying to answer the question of why so many women become devout Islamists).

Who are Islamist women, and why are they Islamists? ... Islamists include the popular urban classes, who often have major economic problems and other frustrations; especially the educated unemployed and underemployed, as well as low level professionals... Some studies of female Islamists indicate that some of their reasons for their ideology are similar to those of men - belief in moralistic, religious ideology that can alone bring a just society, and reaction against the West and Israel.

KEDDIE, *supra* note 10, at 199.

215. See KEDDIE, *supra* note 10, at 199. The Marxist party, or Mojahedin-e Khalq, is not the only opposition party to the current Iranian government, but it is the only opposition party to favor a secular government without the moral code that is currently in force. The other opposition parties vary in their commitment to Islamic principles, but no other party advocates terminating the Iranian moral code. KEDDIE, *supra* note 10, at 170-71.

216. KEDDIE, *supra* note 10, at 170-71.

217. MIDDLE EAST, *supra* note 41, at 257.

218. MIDDLE EAST, *supra* note 41, at 257.

219. 12 F.3d 1233 (3d Cir. 1993).

220. *Id.* at 1235.

221. *Id.*

Iran.<sup>222</sup> Fatin testified that she would try to not wear the veil, and would therefore be subject to whipping and stoning.<sup>223</sup> The judge ruled that Fatin was not a member of a persecuted class because she did not offer enough actions, especially while in America, that would guarantee her repression when she returned.<sup>224</sup> The judge *did* rule, however, that activist women in Iran were a persecuted group that could find asylum in the United States if they could prove their membership in the class.<sup>225</sup>

*Fatin v. INS* was a stepping stone for Iranian women.<sup>226</sup> It finally showed an international awareness of repression on the basis of gender persecution.<sup>227</sup> Judge Alito defined persecution in the case as "Iranian women who refuse to conform to the government's gender-specific laws and social norms."<sup>228</sup> Finally, Judge Alito defined Iranian women who wanted rights as a group seeking such rights.<sup>229</sup> It is now more likely that these women will receive recognition and aid on an international level.<sup>230</sup> Western countries will be able to grant asylum to these women as a persecuted group.<sup>231</sup> This will not

222. Fatin stated that she had been involved with a student political group and with a women's rights group associated with the *Shah's* sister... As a feminist I mean that I believe in equal rights for women. I believe a woman as a human being can do and should be able to do what she wants to do. And over there in ... Iran at the time being a woman is a second class citizen, [the woman] doesn't have any right to herself. *Fatin*, 12 F.3d at 1236.

223. *Id.* Fatin's lawyer asked her what the punishment would be if she refused to wear the full *hejab*. She testified, "I would be jailed or punished in public. Public means by [being] whipped or thrown stones and I would go back to the barbaric year... If I go back, I would try personally to avoid it [wearing the full *hejab*] as much as I could do." *Id.* at 1236. Fatin was denied asylum because she did not testify that she would refuse to wear full *hejab* at any cost.

224. *Id.* at 1233.

225. In *Fatin*, Judge Alito admitted the possibility of creating a particular social group that is persecuted, consisting of women who find the moral codes of Iran so offensive that they refuse to conform, by stating that

[l]imited in this way, the 'particular social group' identified by the petitioner [Fatin] may well satisfy the BIA's definition of that concept, for if a woman's opposition to the Iranian laws in question is so profound that she would choose to suffer the severe consequences of noncompliance, her beliefs may well be characterized as 'so fundamental that ... they ought not be required to be changed'. The petitioner's difficulty, however, is that the administrative record does not establish that she is a member of this tightly defined group, for there is no evidence in that record showing that her opposition to the Iranian laws at issue is of the depth and importance required.

*Id.* at 1241.

226. Warren, *supra* note 2, at 310.

227. Warren, *supra* note 2, at 310.

228. Coleman, *supra* note 50, at 1725.

229. Warren, *supra* note 2, at 319.

230. Warren, *supra* note 2, at 319.

231. Warren, *supra* note 2, at 321.

change the legal status of women in Iran immediately, but it will give some Iranian women who wish to fight for women's rights a place to do so where they will not be arrested, imprisoned and punished for their beliefs.<sup>232</sup> Answers to the problem of the repression of Iranian women will not be easily found. Even if they are, the strong influence of the *Quran* will ensure that such answers will not resemble typical aspects of western feminism.<sup>233</sup> Yet the chance to have a place where ideas can freely be expressed may prove to be an integral step in improving conditions for the women of Iran.

#### PART V: POSSIBLE INTERNATIONAL MEANS TO IMPROVE THE CURRENT SITUATION IN IRAN

A more theoretical solution to the problem has been offered by professor Abdullah An-Na'im.<sup>234</sup> Although An-Na'im does not specialize in the area of Iranian human rights, as a credible interpreter of the forms of Islam, he would like to see a cross-cultural dialogue between Muslim countries, and between non-Muslim and Muslim countries.<sup>235</sup> He feels this could strengthen the power of human rights groups, by providing alternate solutions to cultural acts that violate international human rights standards.<sup>236</sup> He does not want to destroy cultural legitimacy, but does want to achieve a compromise between human rights standards and cultural laws.<sup>237</sup>

An-Naim sees human rights standards as a three-tiered process,

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232. Warren, *supra* note 2, at 321; but see *FEMALE WARRIORS*, *supra* note 83, at 198 (arguing that Iranian women have very little future possibilities in the West. Only militant struggle, according to the author, can free the women of Iran. The author predicts that violent activities on the part of terrorist groups who have a large number of women will increase in the future.).

233. SHADOW, *supra* note 6, at 27-28.

234. Abudullahi Ahmed An-Na'im, *Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman or Degrading Treatment or Punishment*, in *HUMAN RIGHTS IN CROSS-CULTURAL PERSPECTIVE* 19 (1992).

235. An-Na'im notes

Instead of being content with the existing least common denominator, I propose to broaden and deepen universal consensus on the formulation and implementation of human rights through internal reinterpretation of, and cross-cultural dialogue about, the meaning and implications of basic human values and norms.

*Id.* at 21.

236. *Id.*

237. Abudullahi Ahmed An-Na'im, *The Rights of Women and International Law in the Muslim Context*, 9 WHITTIER L. REV. 491, 497 (1994) (stating that complete gender legal equality may not be achievable; however, it should be the objective in today's Muslim world).

beginning inside the country.<sup>238</sup> First, human rights scholars and advocates must achieve legitimacy within the culture.<sup>239</sup> Then they can work to create cross-cultural dialogue, which can eventually lead to a reinterpretation of human rights within the culture.<sup>240</sup>

It is difficult at first to see the system that An-Na'im proposes as being successful in a culture like the prominent one in Iran, especially since the situation of Iran is so drastically different from most Islamic countries.<sup>241</sup> The governing elite in Iran is not likely to give any legitimacy to human rights advocates.<sup>242</sup> To trust in An-Na'im's philosophy in Iran would be to believe that participants in the male elite would be willing to compromise on aspects of their culture that the majority see as mandated by the *Quran* and the *Shari'a*.<sup>243</sup>

An-Na'im, however, says that it is simply a matter of reinterpreting the current *Shari'a* code of law.<sup>244</sup> Because of its extreme flexibility, *Shari'a* law is ultimately what its religious formulators dictate it to be.<sup>245</sup> For example, Iran has agreed to abide by the basic human right against cruel and inhuman punishment,<sup>246</sup> yet the current government states that other punishments, such as the removal of the hand for theft, are not cruel and inhuman because it would be worse

238. Having achieved legitimacy within each tradition, through this internal stage, human rights scholars and advocates should work for cross-cultural legitimacy, so that peoples of diverse cultural traditions can agree on the meaning, scope, and methods of implementing those rights. An-Na'im, *supra* note 234, at 21.

239. An-Na'im, *supra* note 234, at 21.

240. See Afshar, *supra* note 11, at 83 (reaffirming that the Islamic principles of law and morality deprive women of any semblance of equality with men); see also Haleh Afshar, *The Legal, Social and Political Position of Women in Iran*, 13 INT'L J. SOC. L. 47, 53 (1985) (commenting on effect of *Shari'a* law on Iranian women).

241. Afshar, *supra* note 11, at 82-83 (recounting Iran's strict adherence to Islamic laws; for instance, "[t]he Islamic Utopia in Iran has once empowered men to divorce their wives at will... [d]esertion has long been commonplace in Iran.").

242. Afshar, *supra* note 11, at 82-83. It may seem drastic to state that the Iranian government would be unwilling to listen to advocates of human rights, but, unfortunately, at this time it is true. Human rights advocacy is certainly capable of exposing the violations of Iran with regard to human rights treaties that the government has ratified, but Iran has shown time and again that it is not willing to participate in discussions of what it considers to be moral truths.

243. Afshar, *supra* note 11, at 82-83.

244. An-Na'im, *supra* note 234, at 34 (stating that Islamic law requires the state to ensure social and economic justice and to maintain a decent standard of living for all citizens prior to executing such punishments; thus a reinterpretation of *Shari'a* law would be allowed to obtain social justice).

245. An-Na'im, *supra* note 234, at 33-35 (pointing out the fact that *Shari'a* law has gained and lost popularity with successive governments in Iran. The *Shari'a* has been altered each time it has reemerged, and so adapting it to a new situation would not be a moral or religious violation.).

246. An-Na'im, *supra* note 234, at 33-35.

to let the criminal suffer full retribution in hell.<sup>247</sup> An-Na'im suggests that if the right members of the governing elite can be persuaded to formulate a new interpretation, international human rights standards may be satisfied.<sup>248</sup>

In addition, An-Na'im recommends that new interpretations of *Shari'a* law include due process requirements.<sup>249</sup> Alternatively, separate courts may be established to allow those who are true believers in the Muslim faith to receive the justice that they feel necessary, while non-believers receive a more secular punishment.<sup>250</sup>

Again, An-Na'im's theories should be viewed with caution, mainly because most Iranian women lack education and are generally subordinate to the men in their family.<sup>251</sup> Consequently, it would be difficult to establish a court system to which women would feel free to turn in order to avoid cruel and unusual punishment.<sup>252</sup> They would likely remain under the authority of their family and Muslim law.<sup>253</sup>

A more promising route for Iranian women is through the pressures of international human rights under the well-established channels of the United Nations.<sup>254</sup> The two most pertinent conventions are the International Covenant on Civil and Political Rights (ICCPR)<sup>255</sup> and the International Covenant on Economic, So-

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247. An-Na'im, *supra* note 234, at 35 (asserting that "[t]o people who hold this belief, however severe the *Quranic* punishment may appear to be, it is in fact extremely lenient and merciful in comparison to what the offender will suffer in the next life should the religious punishment not be enforced in this life").

248. An-Na'im, *supra* note 237, at 497 (advocating an "alternative Islamization" that would reform the current *Shari'a* law and be more in line with basic human rights standards, which does not imply that An-Na'im is advocating a different interpretation of Iranian *Shari'a* law than the current one). Iran is a theocracy, and its laws are inseparable from its religious interpretation of the *Quran*. Although An-Na'im proposes a theoretical possibility for improving human rights in an Islamic context, he does not make any concrete recommendations for carrying out such a possibility.

249. An-Na'im, *supra* note 234, at 34 (discussing the concept of cruel, inhuman, degrading or punishment in the Muslim context. An-Na'im states that "to the vast majority of Muslims, the matter is settled by the categorical will of God as expressed in the *Quran* and, as such, is not open to question by human beings.").

250. An-Na'im, *supra* note 234, at 34.

251. The *Quran*, *Sura Women*, Verse 33. "Men stand superior to women in that God hath preferred some of them over others, and in that they expend of their wealth: and the virtuous women, devoted, careful (in their husbands') absence, as God has cared for them."

252. See An-Na'im, *supra* note 234, at 35.

253. See An-Na'im, *supra* note 234, at 35.

254. An-Na'im, *supra* note 237, at 503 (arguing that "when taken together with the United Nations Charter and other developments, the Universal Declaration of Human Rights has achieved the status of binding custom.").

255. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 (1966) (effected on Mar. 23, 1976).

cial and Cultural Rights (ICESCR)<sup>256</sup>, which are the only two major human rights documents that Iran has ratified.<sup>257</sup> Unfortunately, conventions that deal more directly with women's issues, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Draft Platform for Action, have not attained the same status.<sup>258</sup>

Article III of both the ICCPR and the ICSECR claims that State Parties have the obligation to ensure the equal right of men and women to enjoy the respective rights set forth in each convention.<sup>259</sup> This obligation includes freely choosing one's marriage partner and one's workplace.<sup>260</sup> The ICCPR also states that women have the right to be free of torture, and cruel, inhuman or degrading treatment or punishment.<sup>261</sup> This may form the basis for arguing against some of the objectionable Iranian laws, like *hejab* and *talaq*.<sup>262</sup> Moreover, Article 26 of the ICCPR states that the government must prohibit discrimination and guarantee freedom from discrimination on the grounds of sex.<sup>263</sup> This Article could be applied to the entire *Shari'a* legal system of status, which gives a woman half the legal status of a

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256. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at 49, U.N. Doc. A/6316 (1966) (effected on Jan. 3, 1976).

257. An-Na'im, *supra* note 237, at 503-04.

258. An-Na'im, *supra* note 237, at 512 (noting that the Convention on the Elimination of All Forms of Discrimination Against Women has been ratified by only five out of 32 Muslim countries; in contrast, the ICSECR has been ratified by 12, and the ICCPR by 11).

259. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at 52, U.N. Doc. A/6316 (1966); G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. 16 at 49, U.N. Doc. A/6316 (1966).

260. *Id.*

261. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at Art. 7, U.N. Doc. A/6316 (1966).

262. Wearing the complete dress required by Islamic law causes many women to faint from heat exhaustion in temperatures that can soar to 115 F. The *talaq*, or repudiation of the wife, leaves her and any young children abandoned without any means of support. Often the woman's own family will not take her back, and if the husband refuses to support her she is often forced into a form of prostitution through the *mut'a*, or temporary marriage. Both of these occurrences would qualify as cruel, inhuman or degrading treatment by the United Nations definitions.

263. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at Art. 26, U.N. Doc. A/6316 (1966) (stating that "[a]ll persons are equal before the law ... In this respect, the law shall prohibit any discrimination and guarantee (emphasis added) to all persons equal and effective protection against discrimination on any ground such as ... sex...").



man.<sup>264</sup>

The ICCPR established a Human Rights Committee which considers the State Parties' reports to the Covenant on the Parties' compliance to covenant obligations and provides a means for other State Parties to lodge complaints that a State Party such as Iran is not meeting its obligations.<sup>265</sup> If the State Party continues to fail to meet its obligations, there is no implementation mechanism. However, the complaint process affords a positive means for States to pressure each other to obtain basic human rights.<sup>266</sup>

Although the ICSECR is more dependent on voluntary cooperation of the State Parties than the ICCPR, it still declares the right for women to freely choose or accept work under just and favorable conditions.<sup>267</sup> Currently, women in Iran require the acquiescence of their husbands or male guardians to be able to enter into employment.<sup>268</sup> This requirement clearly conflicts with the ICSECR, specifically Articles VI and VII.<sup>269</sup> The implementation problem with the tenets of the ICSECR is that State Parties are only required to make steps to progressively achieve the rights recognized in the Covenant,<sup>270</sup> leaving compliance on a voluntary level, without any social

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264. Rhodie, *supra* note 8, at 375. "And call upon two of your men to act as witnesses, and if two men are not available, then a man and two women from among such as are acceptable to you as witnesses, so that if one of them should make a mistake, the other could remind her." (The Quran, Sura 2, Verse 282). It is from this verse that Muslim jurists have decided a general rule, namely that one male witness is equal to two women witnesses and hence man is superior to woman. Also, the verse mentions two female witnesses and one male witness in reference to *financial contracts only*. There is no mention of contracts of other kinds and yet the jurists have concluded from this that in any matter, financial or otherwise, a woman should be treated as half a witness; *see also* IN THE EYE OF THE STORM: WOMEN IN POST-REVOLUTIONARY IRAN 186 (Mahnaz Afkhami & Erika Friedl, ed., 1994) (reprinting the Iranian Penal Code enacted on July 30, 1991, Article 300, which states, "The blood-money for the first- or second-degree murder of a Muslim woman is half of that of a murdered man." Even in murder, an Iranian woman is worth half an Iranian man.).

265. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at Art. 41, U.N. Doc. A/6316 (1966).

266. *See* An-Na'im, *supra* note 237, at 515 (claiming that, "... this optional procedure is a positive move towards greater international jurisdiction over human rights.").

267. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at Art. 6-7, U.N. Doc. A/6316 (1966).

268. Fact Sheet, *supra* note 5 (detailing current economic and social statistics for women in Iran).

269. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at Art. 6-7, U.N. Doc. A/6316 (1966).

270. G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at Art. 2, U.N. Doc. A/6316 (1966) (stating that "[e]ach State Party to the present Covenant, undertakes to take steps, ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant ..."). However, this does not mean that State Parties will not be allowed to regress once they have established a certain level of rights for women.

pressure mechanism as exists in the ICCPR.<sup>271</sup> However, the International Covenant on Economic, Social and Cultural Rights, when paired with the International Covenant on Civil and Political Rights, can be a powerful tool for the international community to pressure Iran into compliance.<sup>272</sup>

This international pressure coupled with cross-cultural dialogue like that described by An-Na'im may prove successful even in a difficult case study like Iran.<sup>273</sup> Western countries like Germany and Canada have updated their asylum policies;<sup>274</sup> other governments, primarily the United States, may soon follow suit. International organizations like the United Nations have the power and resources to stay focused on Iran.<sup>275</sup> Iran, however, has proved immensely successful in becoming close to self-sufficient when its international relations have soured.<sup>276</sup> If necessary, Iran could exist independently of most states,<sup>277</sup> but Iran could not exist indefinitely without trading with *some* of its neighbors.<sup>278</sup> If those neighbors could be convinced to enforce the United Nations' treaties, or at least to put political pressure on the Iranian government, the government may be forced

271. *But see* G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at Art. 19-20, U.N. Doc. A/6316 (1966) (detailing the procedures for the Economic and Social Council of the United Nations to make reports on State Parties and for individual State Parties to make comments to the Economic and Social Council on any aspect of the Covenant. These procedures may be another way for State Parties to complain about the failure by Iran to meet its obligations under the Covenant).

272. An-Na'im, *supra* note 237, at 503-04 (discussing that the ICSECR and ICCPR as general human rights instruments are "more precise" treaties, and thus, have greater legal enforcement power).

273. An-Na'im, *supra* note 237, at 515 (stressing that although change is possible, "[i]nternational standards are meaningless to Muslim women unless they are reflected in the concrete realities of the Muslim environment").

274. Stephanie Kaye Pell, *Adjudication of Gender Persecution Cases Under the Canada Guidelines: The United States Has No Reason to Fear an Onslaught of Asylum Claims*, 20 N.C. J. INT'L. L. & COM. REG. 655 (1995) (claiming that Canada's revised asylum regulations will take the brunt of gender-based claims away from the United States); Nancy Kelly, *Gender-Related Persecution: Assessing the Asylum Claims of Women*, 26 CORNELL INT'L L.J. 625 n.178 (1993) (stating that Germany has given asylum to politically active Iranian women under Article 16(2) of the Constitution of the Federal Republic of Germany based on the expression of political opinion).

275. E.S.C. Res. 1992/67, U.N. ESCOR, E/CN.4/1993/41 1993 (stipulating in the preamble that "in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world").

276. It is my duty to inform everyone... that we [Iranians] fear neither military intervention nor economic boycott, for we are the followers of Imams who welcome martyrdom.... If we are faced with the choice of preserving our honor or filling our stomachs, naturally we will prefer to go hungry and keep our honor. Ayatollah Khomeini, Address to Monseignor Bugnini, Papal Nuncio (Nov. 12, 1979) on file with author.

277. *Id.*

278. Russell Watson, *Iran's Crusade Falls Far Short*, NEWSWEEK, Aug. 22, 1988, at 32.

to change its policies.<sup>279</sup>

Other international groups, such as the Democracy Network of Iran (DNI) and the Iranian Human Rights Working Group (IHRWG), are continually publicizing the condition of women in Iran.<sup>280</sup> The Committee for Humanitarian Assistance to Iranian Refugees in New York publishes a quarterly fact sheet on the current situation of women with the aim of keeping public awareness alive.<sup>281</sup> Groups like these can help governments to educate themselves about the concerns surrounding the current Iranian regime and its treatment of women.<sup>282</sup>

### CONCLUSION: HOPE FOR THE FUTURE

Iranian society has told its women to be various things at various times:<sup>283</sup> they have gone from being judges and property owners to secluded objects whose only purpose is to produce children and please their husbands.<sup>284</sup> Iranian women, like many women from oppressive societies, have the right to vote but no power to use it. As an extension of the men in their family, many Iranian women merely provide an extra vote on behalf of their family. This situation is worse for the generations of women who fought to overthrow the *Shah* because of the deception of the *Ayatollah* Khomeini regarding the power that suffrage would bring them in his society.<sup>285</sup> Thus, women effectively fought for their own downfall without realizing the consequences.<sup>286</sup>

Iranian women activists must now decide where their loyalties lie. If they choose to continue to solely support a political agenda over a women's rights agenda, they will never achieve the goal of becoming more than second class citizens.<sup>287</sup> These activists need to work toward gender goals, using whatever political power they may have to

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279. Anderson & Van Atta, *supra* note 3, at B15. .

280. A number of organizations have emerged and are using the global Internet to disseminate the plight of Iranian women. The DNI can be found at URL <http://www.algonet.se/~farhad/dri>. The IHRWG maintains a web page at <http://gpg.com/MERC/org/ihrwg/ihrwg.html>.

281. Fact Sheet, *supra* note 5 (detailing the current economic and social statistics for women in Iran).

282. Fact Sheet, *supra* note 5.

283. Reisman, *supra* note 4, at 510.

284. SHADOW, *supra* note 6, at 27-28.

285. MIDDLE EAST, *supra* note 41, at 160.

286. MIDDLE EAST, *supra* note 41, at 160.

287. SHADOW, *supra* note 6, at 69-71.

concentrate on the necessary rights for women.<sup>288</sup>

With the ruling in *Fatin* more women can apply for asylum in the West and devote their energies to protesting the current government's repression of women,<sup>289</sup> which is a limited solution at best.<sup>290</sup> It is unlikely however that Iran will ever be swayed by Western influence.<sup>291</sup> What Iranian women need more than anything is the ability to organize and create a cohesive set of goals, along with an efficient plan to carry them out.<sup>292</sup> This can be better achieved in a less repressive environment than the one they face in their own country. Therefore, the *Fatin* decision and Western asylum law offer Iranian women a good opportunity to turn their subjugation into a plan for the future.

More importantly, Iranian women activists need to begin the first level of An-Na'im's cross-cultural dialogue by leading discussions of gender issues inside Iran. It is uncertain how well the Iranian government would receive such discussions due to the scarcity of information—except that gained through the testimony of Iranian refugees. The most likely group to begin such discussions are upper class Iranian women who would have to be free from the national and political mindsets in order to focus on gender. If this were to happen, a foundation might be laid upon which to build a dialogue within the *Shi'a* sect of Islam, then within Islam, and finally on a global scale. This, grouped with the continued scrutiny by non-governmental organizations and pressure from the network of the United Nations, might be enough of a force to bring about a change in the status of women in Iran.

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288. SHADOW, *supra* note 6, at 69-71.

289. *Fatin*, 12 F.3d at 1233.

290. Warren, *supra* note 2, at 284.

291. Reisman, *supra* note 4, at 515.

292. Fedayeen-eKhalq, *supra* note 46, at 132.